STATE OF MICHIGAN

IN THE SUPREME COURT

ALI BAZZI,

Plaintiff-Appellant,

and

GENEX PHYSICAL THERAPY, INC. and ELITE CHIROPRACTIC CENTER, PC,

Intervening Plaintiffs-Appellants,

and

TRANSMEDIC, LLC,

Intervening Plaintiff,

v

SENTINEL INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

CITIZENS INSURANCE COMPANY,

Defendant,

v

HALA BAYDOUN BAZZI and MARIAM BAZZI,

Third-Party Defendants. /

Supreme Court No. 154442

Court of Appeals No. 320518

Lower Court No. 13-000659-NF (Wayne Circuit Court)

DEFENDANT/THIRD-PARTY PLAINTIFF-APPELLEE SENTINEL INSURANCE COMPANY'S ANSWER IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL FILED BY PLAINTIFF-APPELLANT, ALI BAZZI, AND INTERVENING PLAINTIFFS-APPELLANTS, GENEX PHYSICAL THERAPY, INC., AND ELITE CHIROPRACTIC CENTER, PC

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COUNTER-STATEMENT IDENTIFYING THE JUDGMENT OR ORDER APPEALED

Bazzi seeks to appeal from the Court of Appeals decision holding that the innocent third-party rule, established by the Court of Appeals in *State Farm Mutual Auto Ins Co v Kurylowicz*, 67 Mich App 568; 242 NW2d 530 (1976), did not survive this Court's decision in *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012). The Court of Appeals held that the No-Fault Act does not prohibit an insurer from availing itself of the defense of fraud and that MCL 257.520(f)(1) does not apply to restrict application of the fraud defense except to coverages required in Chapter V of the Insurance Code. And the Court rejected public policy arguments aimed at judicially created rules, such as the innocent third party rule, because they upset the balance struck by the Legislature and such policy arguments should be directed to the Legislature for consideration, and not the judiciary.

The Intervening Plaintiffs are not appropriately designated as appellants because they are not aggrieved parties capable of pursuing an appeal; they have settled with Sentinel and were dismissed from the litigation on the basis of a voluntary stipulation and order dismissing them as parties. (**Exhibit A**, Provider Release of All Claims of Personal Protection Coverage; **Exhibit B**, Stipulated Order of Dismissal).

COUNTER-STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly hold that an insurer is allowed to rescind a fraudulently procured insurance policy and thereby bar a claimant's demand for first-party personal injury protection benefits under that policy because (1) *Titan v Hyten* abrogated the innocent third party rule, (2) no balancing of equities is required given the Legislature's enactment of comprehensive provisions none of which abrogate this common law defense in this circumstance, and (3) the decision does not contravene any legislative policy but effectuates the Legislature's careful balancing of rights and obligations in the No-Fault Act?[1]

Plaintiff-Appellant Ali Bazzi[2] answers "No."

Defendant-Appellee Sentinel Insurance Company answers "Yes."

The Wayne County Circuit Court presumably answers "No."

The Michigan Court of Appeals presumably answers "Yes."

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[1] Plaintiff-Appellant Ali Bazzi's application for leave to appeal sets forth three arguments, all of which pertain to the single question of whether the Court of Appeals erred when it held that the "so-called 'innocent third party' rule, which [the Court of Appeals] established in *State Farm Mut Auto Ins Co v Kurylowicz*, 67 Mich App 568; 242 NW2d 530 (1976) survived our Supreme Court's decision in *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012)." Bazzi challenges the Court of Appeals holding that "if an insurer is entitled to rescind a no-fault insurance policy based on a claim of fraud, it is not obligated to pay benefits under that policy even for PIP benefits to a third party innocent of the fraud." Each of its three separate questions encompasses a different argument but all pertain to this basic question. Thus, Sentinel will address all the arguments under a single question.

[2] Intervening Plaintiffs Genex Physical Therapy, Inc, Elite Chiropractic Center, PC and Transmedic LLC settled their claims and are no longer parties to this litigation. They are incorrectly denominated as plaintiffs-appellants in the application for leave to appeal and in the caption to Plaintiff-Appellant Ali Bazzi's application for leave to appeal. If leave is granted, it should not be granted as to these intervening plaintiffs because they voluntarily dismissed their claims and are not proper parties to the case.

COUNTER-STATEMENT OF THE GROUNDS FOR REVIEW

Bazzi seeks leave to appeal on two grounds. First, Bazzi insists that the issue is jurisprudentially significant and that various panels of the Court of Appeals have urged different results. Second, he argues that the decision of the Court of Appeals is wrong. Sentinel urges leave be denied because the published decision of the Court of Appeals is correct (as discussed at length in this brief) and thus no further review is needed. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals. See MCR 7.215(J)(1); *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125, 128; 860 NW2d 51 (2014).

To make a strong case that this is a grantworthy appeal, Bazzi must show that the lower courts are confused or that the Court of Appeals decision is wrong. Bazzi is unable to show confusion in the law in the wake of the Court of Appeals decision, which correctly followed *Titan* and reviewed the issues reaching a correct result. And given that the Court of Appeals' decision was published, later courts have been forced to follow it. Thus, clarification is no longer needed. As a result, Sentinel urges a denial of leave to appeal.

COUNTER-STATEMENT OF FACTS

A. The facts relating to issuance of the insurance policy and the automobile collision of August 8, 2012

1. Ali Bazzi's poor driving record and past accidents made it difficult for him to obtain automobile insurance

Ali Bazzi was involved in a serious single-car accident in 2011 when he was 19 years old; the accident resulted in the vehicle not being drivable and created sufficient force so that the airbag deployed. (State of Michigan Crash Report, **Exhibit C** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). The vehicle Bazzi was driving at the time was insured by CNA under a policy issued to Soukeina Enterprises, a commercial entity. That policy was procured by Hala Bazzi.

2. Mariam and Hala Bazzi switched insurers and entities in order to obtain cheaper coverage for a vehicle leased by Hala Bazzi for personal use and which was regularly driven by Ali Bazzi

When she sought coverage for a 2012 Honda leased to her personally, Hala Bazzi conceded that she did not renew her insurance policy with CNA Insurance because Ali had an accident under that policy. (Examination Under Oath of Hala Bazzi, p 21, 31, 53-54, 58, **Exhibit D** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). Hala Bazzi met with an independent insurance agent, Ali Baydoun, to obtain replacement insurance. (*Id*., p 19). She sought coverage for a 2012 Honda that she had leased in her name, personally, and not in the name of Mimo Investments, LLC, (Lease Worksheet, **Exhibit E** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). When she leased the vehicle Hala Bazzi indicated

that it was for personal and family use. (*Id.*). But she procured a commercial auto policy with Mimo Investments as the named insured.

By this strategy, Hala sought to avoid having to obtain a policy that listed Ali as a named insured and to avoid disclosing that he would be driving the vehicle or that he had had a serious single-car accident. Instead, she procured a policy from a new insurer, Sentinel Insurance Company, and used Mimo Investments as the named insured. (Examination Under Oath of Hala Bazzi, p 21, 31, 53-54, 58, **Exhibit D** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults).

The entity to which Sentinel Insurance Company (an indirect subsidiary of The Hartford Financial Services Group, Inc.) issued the "commercial" automobile policy, Mimo Investments, LLC was an inactive company, a shell corporation. The policy was procured and paid for by Third Party Defendant Hala Bazzi. (Sentinel's Third Party Complaint. ¶ 9). At the time she sought the policy, Hala Bazzi knew that Mimo Investments had no bank accounts, no bills in its name, and, although Mimo Investments was allegedly the parent of "Soukeina Enterprises," no money ever went from Soukeina to Mimo or the other way around. (Examination Under Oath of Hala Bazzi, p 15, 22, 49, **Exhibit D** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). No individuals received a paycheck from Mimo. (Examination under Oath, Mariam Bazzi, p 15, Exhibit G to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults).

Hala Bazzi admitted that she never told Sentinel or Hartford that her son, Ali Bazzi, would be driving the 2012 Honda vehicle even though he drove it on average twice a week. (Examination Under Oath of Hala Bazzi, p 15, 22, 49, **Exhibit D** to Defendant/ Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). Hala Bazzi conceded that she did not renew her insurance policy with CNA Insurance, which was issued to Soukeina Enterprises, because Ali had an accident under that policy; instead, she got the Sentinel policy using Mimo Investments as the named insured instead. (*Id*., pp 21, 31, 53-54, 58). Ali's prior accident occurred in 2011 when he was 19 years old; it was a single-car accident which resulted in the vehicle not being drivable and caused the airbag to deploy. (State of Michigan Crash Report, **Exhibit C** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). Hala Bazzi was actively involved in purchasing this commercial policy in a manner that would save her money. (Examination Under Oath of Hala Bazzi, p 69, **Exhibit D** to Defendant/ Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults).

Likewise, Mariam Bazzi explained that her mother went to Ali Baydoun Agency to get a good deal. (Examination Under Oath of Mariam Bazzi, p 38, **Exhibit F** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Response in Opposition to Third-Party Defendants' Motion to Set Aside Defaults). She knew that Mimo Investments was "actually Soukeina" and that no individuals received a paycheck from Mimo. (*Id*., p 15). Mariam Bazzi also was aware that the vehicle was being insured in Mimo's name even

though Mimo did not own the vehicle. (*Id*., pp 43-44). Mariam Bazzi conceded that she had the opportunity to review the application before signing it. (*Id*., pp 43-44).

B. The character of the pleadings and proceedings

1. Ali Bazzi and various third-party healthcare providers sued Sentinel Insurance Company for coverage under a policy fraudulently procured in the name of Mimo Investments, LLC

This appeal arises out of a complex no-fault action in Wayne County Circuit Court in which Ali Bazzi, a stranger to the subject insurance policy, was injured in an automobile accident while driving the vehicle that was insured by the Sentinel policy. Ali Bazzi sued Sentinel Insurance Company claiming to be an insured under a no-fault policy and seeking to recover expenses and losses allegedly related to accidental bodily injury from an August 8, 2012 motor vehicle collision. (Complaint, Wayne County No. 13-0006590NF).

Ali Bazzi seeks first party no-fault benefits arguing that he is entitled to collect regardless of the claimed fraudulent procurement of the policy and despite this Court's holding and rationale in *Titan Ins Co v Hyten*, 491 Mich 547, 570; 817 NW2d 562 (2012).

2. The circuit court rescinded the fraudulently procured commercial automobile policy that Sentinel issued to Mimo Investments, LLC as a result of Sentinel's third-party action against Mariam Bazzi and Hala Bazzi

Sentinel filed a third party complaint against Hala Bazzi, Ali Bazzi's mother, and Mariam Bazzi, Ali Bazzi's sister, seeking rescission of the insurance policy due to their fraud and material misrepresentations in procuring the policy. (Sentinel's Third Party Complaint, 5/2/13). Sentinel asserted that, in an attempt to insure the vehicle for a lower premium, Mariam and Hala Bazzi fraudulently purchased a commercial policy in the name of Mimo Investments, LLC, which had no insurable interest in the vehicle, and concealed the facts that there was a prior insurance claim, the vehicle was not being used for business

purposes, and the company was a shell without any actual existence as a commercial entity. (Third Party Complaint). Mimo Investments, LLC is not and never has been an active company in Michigan (or any state) since it at no time has had any assets, liabilities, employees, bank accounts, customers, or insurable interests. (*Id.*). Sentinel reasonably relied on Hala Bazzi's misrepresentations in issuing the policy. (*Id.*). Mariam and Hala Bazzi also failed to disclose a prior insurance claim made after Ali Bazzi had a serious single car accident while driving a car insured in the name of another corporate entity.

The circuit court entered a default judgment in Sentinel's favor and against Hala Bazzi in the third-party action, thereby rescinding the policy. The court's September 19, 2013 order specifically held that "the Mimo Investment, LLC policy of insurance with Sentinel Insurance Company is thereby rescinded."[3] In light of the default judgment entered in *Ali Bazzi v Sentinel*, the following averments are deemed to be true:[4]

> 5. This litigation arises out of an August 8, 2012 motor vehicle accident where Plaintiff Ali Bazzi was driving a vehicle owned and/or insured by Third Party Defendants HALA BAYDOUN BAZZI and MARIAM BAZZI.
>
> 6. That SENTINEL INSURANCE COMPANY, at all times pertinent hereto, was defrauded by Third Party Defendants, HALA BAYDOUN BAZZI and MARIAM BAZZI, when they procured a commercial Sentinel Insurance Policy for Mimo Investments, LLC.

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[3] No appeal challenged the entry of a default judgment against Mariam and Hala Bazzi. They did not appear or file an appeal urging reversal or arguing that the policy was erroneously rescinded.

[4] "As a general rule, upon the entry of a default, the well-pled factual allegations of the complaint … are taken as true." *Ackron Contracting Co v Oakland County*, 108 Mich App 767, 775; 310 NW2d 874 (1981), (cited in Defendant/Third-Party Plaintiff Sentinel Insurance Company's Motion for Summary Disposition, ¶ 8).

7. That Third Party Defendants, HALA BAYDOUN BAZZI and MARIAM BAZZI, purchased the aforementioned commercial insurance policy for Mimo Investments, LLC, and intentionally made material misrepresentations concerning the alleged ownership of the company, the alleged existence of the company, the use of the vehicle for business purposes, and that no prior insurance claims had been made, and other misrepresentations upon which Defendant reasonably relied.

8. At all times relevant herein, Third Party Defendant MARIAM BAZZI was the Resident Agent of Mimo Investments, LLC and procured the commercial policy.

9. At all times relevant herein, Third Party Defendant HALA BAYDOUN BAZZI was the owner of the 2012 Honda Civic and procured the commercial policy.

10. That Mimo Investments, LLC, upon information and belief, is not and has never been an active company with the State of Michigan (or any other state) as it at no time had assets, liabilities, employees, any bank accounts, customers, nor insurable interests.

11. That Third Party Defendants, HALA BAYDOUN BAZZI and MARIAM BAZZI, fraudulently purchased a commercial policy for Mimo Investments, LLC in an attempt to insure the vehicle for less money than would have been otherwise required under a personal policy and to conceal the fact of a prior insurance claim.

12. That upon information and belief, Third Party Defendants, HALA BAYDOUN BAZZI and MARIAM BAZZI, as well as Plaintiff Ali Bazzi all lived at the same alleged "business" address (a residential home on Tireman in Dearborn). (Defendant Sentinel Insurance Company's Third Party Complaint, Ex A to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Motion for Summary Disposition).

The Default Judgment in *Ali Bazzi v Sentinel* specifically states that "the Mimo Investment, LLC policy of insurance with Sentinel Insurance Company is thereby rescinded." (Order Granting Sentinel Insurance Company's Motion for Default Judgment Against Third-Party

Defendant Hala Baydoun Bazzi, **Exhibit D** to Defendant/Third-Party Plaintiff Sentinel Insurance Company's Motion for Summary Disposition).

3. The circuit court denied Sentinel summary disposition as to Ali Bazzi's claim that he was entitled to coverage under the now-rescinded policy

Sentinel argued that it was entitled to summary disposition against Ali Bazzi and the healthcare providers on the basis of *Titan Ins Co v Hyten*, 491 Mich 547, 570; 817 NW2d 562 (2012) and the trial court's rescission of the policy. Sentinel contended that Ali Bazzi and the intervening healthcare providers, who are in privity with him, could not recover against Sentinel because the entry of the default judgment meant adoption of factual findings that the "commercial" automobile policy was rescinded because it was procured by fraud. (Defendant/ Third-Party Plaintiff Sentinel Insurance Company's Motion for Entry of Summary Disposition, 9/9/13). Mariam Bazzi, the resident agent for Mimo Investments, LLC, procured the Sentinel policy for a 2012 Honda Civic owned by Hala Bazzi. (Defendant/ Third-Party Plaintiff Sentinel Insurance Company's Third-Party Complaint, ¶ 5-12). Both Hala and Mariam Bazzi were involved in procuring the policy, which was issued to Mimo, and they failed to disclose a prior accident, obtained a commercial policy for a vehicle leased by Hala Bazzi for personal and family use, and failed to disclose that Ali Bazzi would be a regular driver of the vehicle.

Sentinel argued that the policy had properly been rescinded and thus was void *ab initio*. In Sentinel's view, the innocent third party rule was overruled in *Titan*. Sentinel also argued that, regardless of whether the plaintiff, Ali Bazzi, was personally implicated in the fraudulent scheme to obtain cheaper coverage by procuring a commercial insurance policy to provide personal coverage to the Bazzi family, no coverage would be available since the

policy was rescinded based on the fraud of Mariam and Hala Bazzi. Relying on an unpublished opinion, *Meyers v Transportation Services, Inc,* 2014 WL 5338553 (Docket No 300043, September 24, 2013) (attached hereto as Exhibit E), Sentinel insisted that MCL 257.520(f)(1) did not apply to PIP benefits, but only to a liability policy. (Transcript, 2/6/14, pp 18-21).

After extensive briefing and oral argument, the circuit court held that Bazzi still had a claim based on the innocent third-party exception which the court concluded imposed statutory benefits under the No-Fault Act despite the fact that the policy had been rescinded. (Transcript, 2/6/14, pp 51-54). The circuit court issued an order denying the motion for the reasons stated on the record. (Order Denying Defendant/ Third-Party Plaintiff Sentinel Insurance Company's Motion for Summary Disposition, 2/20/14).

4. Sentinel successfully sought leave to appeal on an interlocutory basis

Sentinel sought leave to appeal from the Court of Appeals, which denied leave. (Order, 5/21/14). It then sought relief in this Court, which remanded the case to the Court of Appeals for hearing as on leave granted. (Order, 10/28/14).

5. The Court of Appeals held that an insurer is entitled to declare a fraudulently-procured No-Fault policy void ab initio and rescind it thereby denying the payment of benefits to innocent third parties

The Court of Appeals issued a published decision concluding that the "so-called 'innocent third-party' rule" did not survive this Court's decision in *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012). The Court of Appeals read *Titan* to mean that "if an insurer is entitled to rescind a no-fault insurance policy based upon a claim of fraud, it is not obligated to pay benefits under that policy even for PIP benefits to a third party innocent of the fraud." *Bazzi v Sentinel Ins Co*, __ Mich App __; __ NW2d __ (2016) (Docket No.

320518); slip op at 3. In reaching this conclusion, the Court of Appeals concluded that *Titan*'s holding extended to mandatory no-fault benefits because the *Titan* Court's holding contained no qualification limiting its reach to optional benefits. The Court of Appeals concluded that the question was whether the No-Fault Act "prohibit[ed] an insurer from availing itself of the defense of fraud." *Id*. at 5. The Court pointed out that "none of the parties identify a provision in the no-fault act itself where the Legislature statutorily restricts the use of the defense of fraud with respect to PIP benefits." *Id.* Thus, the one argument that *Titan* did not foreclose, that the Legislature had barred rescission on the basis of fraud, was not made by any party. The Court reasoned that MCL 257.520(f)(1) only restricts the application of the fraud defense to coverage required under Chapter V, that is, to coverage required for proof of financial responsibility under MCL 257.518 and MCL 257.519. *Id.* At 6. The Court distinguished the Legislature's language in these provisions, which relate to drivers against whom there is an outstanding, unsatisfied judgment from MCL 500.3101 and MCL 500.3009, which contain minimum limits as in the financial responsibility act, but which do not "restrict the availability of the fraud defense." *Id* at 7.

The Court of Appeals also rejected Bazzi's public policy argument, noting that this Court had criticized the *Kurylowicz* court for justifying the "easily ascertainable" rule on the basis of public policy. *Id* at 8-9. This Court rejected the use of "public policy" to "effectively replace… the actual provisions of the no-fault act with a generalized summation of the act's 'policy.'" *Id* at 8 quoting 491 Mich at 564-566. The Court of Appeals set forth this Court's discussion of public policy as it relates to the No-Fault Act, emphasizing that the statute "was the product of compromise, negotiation, and give-and-take bargaining" and that allowing a court to "undo those processes by identifying an all-purpose public policy that

supposedly summarizes the act and into which every provision must be subsumed, is to allow the court to act beyond its authority by exercising what is tantamount to legislative power." *Id*. The Court of Appeals noted that the policy concerns raised in the Court of Appeals were "for the Legislature" and not the Court to determine whether there is merit in them and, if so, to determine the appropriate remedy. *Id.* at 9. Based on its rejection of the arguments presented by Bazzi, the Court reversed the circuit court's denial of summary disposition and remanded for summary disposition if the circuit court confirms that the default judgment conclusively established fraud or that the circuit court determines that there is no genuine issue of material fact regarding fraud. *Id* at 10.

6. Ali Bazzi now seeks leave to appeal to challenge this decision on the basis of three arguments set forth in his application

Ali Bazzi filed an application for leave to appeal to this Court. The application for leave to appeal is purportedly filed on behalf of Mr. Bazzi and the intervening plaintiffs-appellants, Genex Physical Therapy, Inc and Elite Chiropractic Center, PC. But Sentinel settled its claims with Genex Physical Therapy and Elite Chiropractic Center. (Exhibits A-D). They thus lack standing to appeal.[5] Bazzi urges this Court to grant leave to appeal or to grant oral argument on its application to consider whether to overrule the Court of Appeals published decision and rule in its favor on the basis of the so-called "innocent third party" rule.

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[5] To be an "aggrieved party" and thus entitled to seek appellate relief, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency. *Federated Ins Co v Oakland County Road Commission*, 475 Mich 286, 291-292; 715 NW2d 846 (2006)

COUNTER-STATEMENT OF THE STANDARD OF REVIEW

Sentinel moved for summary disposition pursuant to MCR 2.116(C)(10). A trial court's ruling on a motion for summary disposition presents a question of law subject to *de novo* review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012); *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Liparoto Constr Inc v Gen Shale Brick Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials LLC v Galui Constr Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. (*Id*.). The court reviews "a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." (*Id*.).

Questions of statutory interpretation are also reviewed *de novo* as a question of law. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002); *Parkwood Ltd Dividend Hous Assn v State Hous Dev Auth*, 468 Mich 763, 767; 664 NW2d 185 (2003).

ARGUMENT

The Court Of Appeals Correctly Held That An Insurer Is Allowed To Rescind A Fraudulently Procured Insurance Policy And Thereby Bar A Claimant's Demand For First-Party Personal Injury Protection Benefits Under That Policy Because (1) *Titan v Hyten* Abrogated The Innocent Third Party Rule, (2) No Balancing Of Equities Is Required Given The Legislature's Enactment Of Comprehensive Provisions None Of Which Abrogate This Common Law Defense In This Circumstance, And (3) The Decision Does Not Contravene Any Legislative Policy But Effectuates The Legislature's Careful Balancing Of Rights And Obligations In The No-Fault Act

A. Absent a statute limiting or narrowing them, *Titan v Hyten* held that an insurer is entitled to avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application even when the claimant is an innocent third party

Insurance policies are contracts that are governed by contract law in the absence of an applicable statute. *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 55 n 3; 502 NW2d 23 (1993). An insurance policy and the statutes relating to it must be read together. (*Id.,* citing 12A Couch, Insurance, 2d (rev ed) § 45.694, pp 331-332). In *Titan v Hyten*, 491 Mich 547; 817 NW2d 562 (2012), this Court made clear that "because insurance policies are contracts, common-law defenses may be invoked to avoid enforcement of an insurance policy, unless those defenses are prohibited by statute." 491 Mich at 555. Among the common law defenses mentioned by the *Titan* court were duress, waiver, estoppel, fraud, and unconscionability. (*Id.*). The *Titan* court specifically recognized that "fraud in the procurement of the contract may be grounds for monetary damages in an action at law … or … grounds to retroactively avoid contractual obligations through traditional legal and equitable remedies such as cancellation, rescission, or reformation…." 491 Mich at 557. And in *Titan*, the Court applied these principles to conclude that Titan Insurance Company was entitled to reform its policy to reduce to the statutory liability minimums established in

MCL 257.520 the liability coverage limits available to innocent accident victims injured in an automobile collision.

Insurers and others who enter into contracts in Michigan have long been entitled to rescind or reform those contracts. *Roberts v Titan Ins Co (On Reconsideration)*, 282 Mich App 339, 359-360; 764 NW2d 304 (2009); *Lake States Ins Co v Wilson*, 231 Mich App 327, 331–332; 586 NW2d 113 (1998); *Farmers Ins Exch v Anderson*, 209 Mich App 214, 218; 520 NW2d 686 (1994). Material misrepresentations in the procurement of insurance can "substantially increase the risk of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985). A false representation in an application for no-fault insurance that materially affects the acceptance of the risk entitles the insurer to retroactively void the policy. *Katinski v Auto Club Ins Assn*, 201 Mich App 167, 170; 505 NW2d 895 (1993).

Michigan courts have outlined the nature of rescission, making clear that it restores the parties to the position they would have been in if no contract ever existed:

> To rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. But this by itself would constitute no more than a breach of the contract or a refusal of performance, while the idea of rescission involves the additional and distinguishing element of a restoration of the status quo.

Cunningham v Citizens Ins Co of America, 133 Mich App 471, 479; 350 NW2d 283 (1984). It is well-settled that a material misrepresentation made in an application for no-fault insurance entitles the insurer to rescind the policy. *Auto-Owners Ins Co v Johnson*, 209 Mich

App 61; 530 NW2d 485 (1995) , *Farmers Ins Exchange v Anderson*, 206 Mich App 214, 218; 520 NW2d 686 (1994); *Katinsky v Auto Club Ins Assn*, 201 Mich App 167, 170; 505 NW2d 895 (1993); *Auto-Owners Ins Co v Commr of Ins*, 141 Mich App 776, 779-780; 369 NW2d 896 (1985). Rescission is justified even in cases of innocent misrepresentation if a party relies upon the misstatement, because otherwise the party responsible for the misstatement would be unjustly enriched. *Britton v Parkin*, 176 Mich App 395, 398-399; 438 NW2d 919 (1989). This is true, even if it was a mutual mistake of fact. *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995).

B. No provision in either Michigan's No-Fault Act or Insurance Code abrogates the common-law remedy providing for rescission of a fraudulently procured motor vehicle personal injury protection insurance policy to deny coverage to a third party claimant seeking first-party personal injury protection benefits

1. The question of whether any Michigan statute narrows or limits common-law contract remedies, such as rescission, is properly decided on the basis of the words of the statute read in context

The courts of the State have long recognized that statutory analysis must begin with the wording of the statute itself. *Robinson v Detroit*, 462 Mich 439; 459 NW2d 307 (2000). When "the words of a statute are clear, the actor should be able to expect, that is, rely, that they will be carried out by all in society, including the courts." *Id.* at 466-467. But when a court "confound[s] those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interest." (*Id*.). The Court has characterized this as a form of "judicial usurpation that runs counter to the bedrock principles of American constitutionalist, i.e., that the legislative power is reposed in the people as reflected in the work of the Legislature, and, absent a constitutional violation, the courts have no legitimacy in overruling or nullifying the people's representatives." (*Id*.).

Accordingly, the words of a statute provide "the most reliable evidence of its intent ...", *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981) and *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Each word of a statute is presumed to be used for a purpose and, as far as possible, effect must be given to every word, clause, and sentence. *Robinson, supra*, citing *University of Michigan Bd of Regents v Auditor General*, 167 Mich 444, 450; 132 NW 1037 (1911). Words are to be given their common and ordinary meaning. *Nawrocki v Macomb County Road Commn*, 463 Mich 143, 159; 615 NW2d 702 (2000). It is only where a statute is ambiguous that a court properly looks outside the statute to ascertain the legislature's intent. *Turner v ACIA*, 448 Mich 22, 27; 528 NW2d 681 (1995).

In addition to considering the plain meaning of the words used in a statute, a court should also observe their placement and purpose in a statutory scheme. *Sun Valley, supra*. The wisdom of a statute is for the legislature to determine. A law must be enforced as written. *Fowler v Doan*, 261 Mich App 595; 683 NW2d 682 (2004) and *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652; 651 NW2d 458 (2002). The *Rossow* court also made the point that, unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. The language must be applied as written and nothing may be read into a statute that is not within the manifest intent of the legislature as evidenced from the wording of the act itself. Stated otherwise, a court cannot and should not add requirements to a statute that are not found there. *Empire Iron Mining Partnership v Orhanen*, 211 Mich App 130; 535 NW2d 228 (1995). See also *Rory v Continental Ins Co*, 473 Mich 457, 467; 703 NW2d 23, 30 (2005).

2. Titan recognized that insurers retain traditional legal and equitable defenses absent a specific statute narrowing or limiting those remedies and read the Proof of Financial Responsibility Act to limit an insurer's ability to rescind an insurance contract on the basis of fraud only as to an owner's or operator's motor vehicle liability policy certified under MCL 257.518 or MCL 257.519

In *Titan*, this Court squarely held that rescission or reformation is available to insurers as a traditional common law remedy unless they are narrowed or limited by statute. 491 Mich at 557. This Court explicitly rejected the argument that MCL 257.520(f)(1) limits the insurer's ability to avoid liability under the policy on the basis of fraud. 491 Mich at 559. MCL 257.520(a) provides:

> A "motor vehicle liability policy" as used in this chapter, shall mean an owner's or an operator's policy of liability insurance, certified as provided in section 518 or section 519 as proof of financial responsibility, and issued, except as otherwise provided in section 519, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

The language governs a "motor vehicle liability policy" and specifies "as used in this chapter…" (The chapter referred to is Chapter V of the Vehicle Code). The Legislature required "such owner's policy of liability insurance" to designate the motor vehicles as to which the coverage is granted, MCL 257.520(b)(1) and insure "the person named therein and any other person, as insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle…." MCL 257.520(b)(2).

The *Titan c*ourt emphasized that MCL 257.520(f)(1)'s "reference to 'motor vehicle liability policy' is not all encompassing." (*Id.).* The Legislature enacted the Proof of Financial Responsibility for the Future Act as part of Michigan's No-Fault scheme in MCL 257.511, *et seq.* But the provisions in it, which require certification, do "not in every case limit the

ability of an automobile insurer to avoid liability on the ground of fraud…" 491 Mich at 559. To the contrary, MCL 257.520(f)(1) only applies to a policy that has been certified as proof of financial responsibility. (*Id*.). Absent that certification, this provision has no relevant application. (*Id.).* The Court explicitly overruled other decisions that relied on MCL 257.520(f)(1) to impose requirements on an insurer that went beyond the requirements of Chapter V of the Vehicle Code, that is, of MCL 257.520(f)(1)'s certification under MCL 257.518-.519. (*Id.).*

According to *Titan,* MCL 257.520(f)(1), which is part of the Financial Responsibility Act, refers only to "the insurance required by this chapter." By this language, the Legislature did not extend the limitation on rescinding a policy on the basis of fraud beyond Chapter V of the Vehicle Code to other coverages, such as first party personal injury protection (PIP) and property protection benefits. To the contrary, the Legislature specifically limited the reach of this provision barring rescission to insurance "required by this chapter" only. MCL 257.520(f)(1).

The personal injury protection insurance (PIP) benefits that are at issue in this case were established in Chapter 31 of the Insurance Code, MCL 500.3101, *et seq.* As part of the chapter entitled "Motor Vehicle Personal and Property Protection," the Legislature required insurers issuing personal protection insurance to "pay benefits for accidental bodily injury arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105. This separate insurance, labeled "personal protection insurance," is not governed by MCL 257.520(f)(1). Accord, *Titan*, 491 Mich at 558. In the Insurance Code, the Legislature mandated this minimum coverage and various other provisions in automobile insurance policies but held

that policies issued in violation of the provisions would "be held valid but be deemed to include the provisions required…." MCL 500.3012. At the same time, it made clear that "the insurer shall have all the defenses in any action brought under the provisions of such sections that it originally had against its insured under the terms of the policy providing the policy is not in conflict with the provisions of such sections." (*Id.*).

This Court has recently instructed that an interpretation of statutory provisions should pay attention to the "Legislature's own statutory organization…." *Johnson v Recca*, 492 Mich 169, 176; 821 NW2d 520 (2012). "Statutory interpretation requires the court to consider the placement of the critical language in the statutory scheme." *United States Fidelity & Guaranty Co v Michigan Catastrophic Claims Assn (On Rehearing*), 484 Mich 1, 13; 795 NW2d 101 (2009). In doing so, it is error to give no effect to a legislative "compartmentalization" that distinguishes between different things. *Johnson*, 492 Mich at 177. These principles apply here and support the conclusion that first-party personal injury protection (PIP) insurance is intended to be treated differently than motor vehicle liability insurance. The Legislature compartmentalized two different kinds of insurance coverage – motor vehicle liability insurance and personal injury protection insurance. It established different procedures for dealing with them and different protections for those seeking to obtain coverage. And these legislative choices are properly respected.

This Court interpreted these words in *Titan t*o say that MCL 257.520 does *not* apply to policies that fall under other chapters but only to those under "this chapter." Having done so, under linguistic conventions that govern the meaning of words and sentences, it cannot now reach an opposite conclusion when interpreting the statute as it applies to the personal injury protection policy at issue here. "[W]ords used in one place in a statute have

the same meaning in every other place in the statute." *Little Caesar Enterprises v Dept of Treasury*, 226 Mich App 624, 630; 575 NW2d 562 (1997). See also *Cain v Waste Mgmt Inc,* 472 Mich 236, 259; 697 NW2d 130 (2005) ("We find the proper construction of the word '[l]oss' in [MCL § 418.]361(3)(b) is that it has the same meaning given it in §361(2).").

C. Contrary to Bazzi's argument, *Titan* is not distinguishable on the basis that the benefits at issue here are mandatory rather than optional; it governs on the basis of linguistic conventions properly applicable to the interpretation of the same statutory language

Bazzi attempts to distinguish *Titan* on the basis that it considered whether equitable defenses are available to avoid liability for optional insurance coverage. Plaintiff-Appellant Ali Bazzi's application for leave to appeal, pp 7-10. But this Court's analysis in *Titan* focused on the "principal question presented" there, which was "whether an insurer may avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground that fraud in the application for insurance, when the fraud was easily ascertainable and the claimant is a third party." 491 Mich at 560. The *Titan* court recognized that *Kurylowicz* applied only to innocent third parties (not to the insured who had perpetrated the fraud at the time the policy was issued) and to easily ascertainable fraud. Thus, as the Court of Appeals recognized in its decision in favor of Sentinel, *Titan* rejected the contention that the judiciary is entitled to engraft onto the language of the statute a provision or rule protecting purportedly innocent third parties. *Bazzi v Sentinel*, slip op p 4.

The Court of Appeals correctly explained that the basis for this Court's decision in *Titan* was not that the benefits were optional, but that common law defenses were not "prohibited by statute." *Bazzi*, slip op p 5 quoting *Titan*, 491 Mich at 554. The Court of Appeals reasoned that "if there is a valid policy in force, the statute controls the mandated

coverages." *(Id.)*. It then elaborated, explaining that "what coverages are required by law is simply irrelevant where the insurer is entitled to declare the policy void *ab initio*." (*Id*.). In other words, the "question is whether the statute prohibits an insurer from availing itself of the defense of fraud." (*Id.*). And the Court of Appeals pointed out that "none of the parties identify a provision in the no-fault act itself where the Legislature statutorily restricts the use of the defense of fraud with respect to PIP benefits." (*Id.*). And Bazzi has identified none in its application for leave to appeal to this Court.

Bazzi ignores this aspect of the Court of Appeals discussion and of *Titan*. Instead, he offers a number of statutory red herrings[6] that are inapplicable and do not abrogate common law defenses to personal injury protection benefits. For example, Bazzi urges this Court to grant leave insisting that insurance coverage for motor vehicles is mandatory pursuant to MCL 500.3101. Under Bazzi's reading, that provision coupled with MCL 500.3131(1) means that MCL 257.520(f)(1) governs and the policy may not be rendered void due to fraud after injury or damage covered by the policy occurs.[7] But this reading cannot be squared with the language in the various statutory provisions or with this Court's linguistic analysis of them as set forth in *Titan*. There, this Court interpreted MCL 257.520(f)(1) to limit "the ability of an insurer to avoid liability on the ground of fraud in obtaining a motor vehicle policy with respect to insurance required by the financial responsibility act." *Titan* 491 Mich at 558. This Court specifically pointed out that this

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6 A red herring is one name for the logical fallacy of irrelevance. Its name stems from the sport of fox hunting in which a dried smoked herring, which is red in color, is dragged across the trail of the fox to throw the hounds off the scent. Thus, a "red herring" argument is one which attempts to distract the audience from the issue in question through the introduction of some irrelevancy. www.fallacyfiles.org

provision, which Bazzi now urges this Court to hold applies to personal protection insurance benefits not required by Chapter V, "refers only to 'the insurance *required by this chapter*' … and the only insurance required by chapter V of the Michigan Vehicle Code is insurance 'certified as provided in [MCL 257.518] or [MCL 257.519] as proof of financial responsibility…'" 491 Mich at 559.

Bazzi's argument runs squarely into this Court's discussion and holding regarding the scope of MCL 257.520(f)(1). Contrary to Bazzi's newly raised argument that MCL 500.2121(1) sub silentio abrogates an insurer's ability to render a policy void *ab initio* due to fraud, this Court rejected that reasoning in *Titan* when it concluded that MCL 257.520(f)(1)'s use of the limiting language regarding Chapter V meant that it did not govern policies issued to provide PIP benefits. In fact, this Court specifically overruled three past decisions, one of this Court and two of the Court of Appeals, which had held that MCL 257.520 applies to all liability insurance policies. 491 Mich at 569-570 overruling *State Farm Mut Auto Ins Co v Sivey*, 404 Mich 51, 57; 272 NW2d 555 (1978); *Farmers Ins Exch v Anderson*, 206 Mich App 214, 220; 520 NW2d 686 (1994); *League Gen Ins Co v Budget Rent-A-Car of Detroit*, 172 Mich App 802, 805; 432 NW2d 751 (1988). And this Court pointed out that it had twice held in earlier discussions that MCL 257.520 applies only to automobile liability policies. 491 Mich at 559-560 citing *Burch v Wargo*, 378 Mich 200, 204, 144 NW2d 342 (1966) and *State Farm Mut Auto Ins Co v Ruuska*, 412 Mich 321, 336 n 7; 314 NW2d 184 (1982). Moreover, the Court explained that the "precise question" about whether an insurer may avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application" when the fraud was easily ascertainable *and the claimant is a third party*," had been addressed in

Keys v Pace, 358 Mich 74; 99 NW2d 547 (1959); 491 Mich at 560. The *Titan* court explained that *Kurylowicz* was inconsistent with *Keys*, and had wrongly disregarded *Keys*. 491 Mich at 561-566. That same reasoning applies here. Unless this Court adopts an analysis that is inconsistent with its linguistic interpretation of the precise same words and phrases it interpreted in *Titan,* Bazzi's argument must be rejected.

Bazzi also advances a legislative acquiescence argument in support of his position. That argument is fatally flawed on two grounds. First, as the *Titan* court's discussion of past case law demonstrates, the courts have been inconsistent with their interpretation of the no-fault act, with early courts recognizing that traditional legal and equitable defenses are available to void a policy and then later decisions deviating for a time before this Court returned to the earlier case law and the primacy of the text. Second, this Court has decisively rejected legislative acquiescence as a basis for interpreting statutes. *Donajkowski v Alpena Power Co*, 460 Mich 243; 596 NW2d 574 (1999). The Court said that "legislative acquiescence is an exceedingly poor indicator of legislative intent." 460 Mich at 258 citing *Rogers v Detroit*, 257 Mich 125, 163-166; 579 NW2d 840 (1998). See also Markman, *On Interpretation and non-interpretation*, 3 Benchmark 219, 226 n 60 (1987); *Van Dorpel v Haven-Busch Co*, 350 Mich 135, 145-146; 85 NW2d 97 (1957) (criticizing the doctrine as "scarcely borne out by the facts," placing the legislature in the role of ultimate court of last resort, and delaying in correcting an erroneous decision because it has persisted over time).

Here, the vacillating case law coupled with the strong policy of our courts disfavoring legislative acquiescence supports Sentinel's position that no weight should be given to the history of now-overruled past cases. These decisions themselves were

inconsistent with prior published decisions of both this Court and the Court of Appeals. Moreover, nothing in the legislative language or record supports the conclusion that the Michigan Legislature agreed with these erroneous decisions. And the language of the statute supports Sentinel's view to the contrary.

D. Bazzi's argument that rescission should only be allowed after a court balances the equities is inconsistent with this Court's analysis in *Titan* and amounts to a request to the courts to provide judicial relief comprehensive statutory plan enacted by the Legislature.

Bazzi argues that even if the default judgment established fraud in the procurement of the policy, the court has discretion to decline to rescind the policy because "two parties are 'equally innocent' (like an innocent third party and an innocent insurer)." (Application for Leave to Appeal, pp 13-14). But this argument is problematic. First, if a court were to balance equities in determining whether to rescind a fraudulently procured insurance policy, it would properly look at the equities between the two parties to the contract: the insurer and the insured – and not to some third party to the contract. Second, this Court has decisively rejected so-called equitable theories that amount to overriding or replacing provisions in a comprehensive regulatory framework. Third, Bazzi's argument here amounts to a request that the Court sanction a standardless equitable judicial determination that would be used to alter and essentially override the comprehensive and detailed balance that the Legislature created when it enacted the Michigan No-Fault Act. If a policy is fraudulently procured, absent a law barring rescission, Michigan courts have always allowed rescission so that the insurer is not forced to provide a defense or indemnify a risk for which it did not agree or charge a premium.

In *Stokes v Millen Roofing Co*, 466 Mich 660; 649 NW2d 371 (2002), the Court held that an unlicensed roofing contractor was not entitled to equitable relief after installing a

slate roof, since that relief would allow equity to be used to defeat the statutory ban on an unlicensed contractor seeking compensation for residential construction. "Courts must be careful not to usurp the Legislative role under the guise of equity because a statutory penalty is excessively punitive." (*Id*. at 671-72). This Court quoted with approval the Court of Appeals opinion in that case which stated, "[r]egardless of how unjust the statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree." (*Id*. at 672). Justice Markman's concurring opinion noted that even though the result in that case was "highly inequitable . . . we cannot allow equity to contravene the clear statutory intent of the Legislature." (*Id*. at 677).

In *Devillers v Auto Club Ins Assn,* 473 Mich 562; 702 NW2d 539 (2005), the Court held that the one-year-back limitation in MCL 500.3145(1) for recovering no-fault personal protection insurance benefits was not subject to judicial tolling. The Court explained: "Section 3145(1) plainly provides that an insured 'may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.' There has been no allegation of fraud, mutual mistake, or any other 'unusual circumstance' in the present case. Accordingly, there is no basis to invoke the Court's equitable power. [The dissent] errs . . . in assuming that equity may trump an unambiguous and constitutionally valid statutory enactment." (*Id*. at 591).See also *Senters v Ottawa Sav Bank, FSB*, 443 Mich 45, 55; 503 NW2d 639 (1993) (observing that MCL 600.3240 specifies the requirements for redemption following foreclosure by advertisement, "leaving no room for equitable considerations absent fraud, accident, or mistake.")

In *Eastbrook Homes, Inc v Treasury Dept*, 296 Mich App 336; 820 NW2d 242 (2012), the Court of Appeals held that a home builder's intent to structure quitclaim transactions as tax exempt and the builder's belief regarding the legal effect of the transactions were insufficient grounds to grant the builder equitable relief to reform the quitclaim deeds so that they fell within purview of the exemption provision of the State Real Estate Transfer Tax MCL §§ 207.523(1)(b), 207.526(d). The Court of Appeals instructed that "[e]quity may not be invoked—in the absence of fraud, accident, or mistake—to avoid the dictates of a statute." (*Id*. at 347, citing *Stokes*, 466 Mich at 671-672; *Freeman v Wozniak*, 241 Mich App 633, 637-638; 617 NW2d 46 (2000)).

When an insured obtains a policy by fraud, it is properly rescinded. The innocent insurer has no obligation to provide coverage under that policy to the person or entity which obtained the policy through fraud. Nor is there any equitable principle that would suggest that the courts should require an insurer to retain funds to pay a stranger with whom it has no contractual relationship for injuries not caused by the insurer. As this Court explained in *Titan*, requiring an insurer to pay an innocent third party pursuant to a policy that is properly rendered void because it was fraudulently obtained lacks support in the no-fault act and "there is simply no basis in the law to support a proposition that public policy requires a private business in these circumstances to maintain a source of funds for the benefit of a third party with whom it has no contractual relationship." 491 Mich at 575 citing *Terrien v Zwitt*, 467 Mich 56, 66; 648 NW2d 602 (2002).

The Court of Appeals correctly rejected Bazzi's arguments including his contention that MCL 500.3101 and MCL 500.3131(1) incorporate the financial responsibility laws and somehow bar use of the fraud defense after a collision has occurred. The Court correctly

concluded that these statutes do not restrict the availability of a fraud defense. *Bazzi*, slip op at p 7. Contrary to Bazzi's contention, *Kleit v Saad*, 153 Mich App 52, 56; 395 NW2d 8 (1985) is not precedentially binding and, in any event, deals with whether a garnishee defendant is obligated to provide personal injury protection to plaintiffs although the insured failed to give the insurer notice of the personal injury action. Its holding does not address whether fraud is a defense to personal injury policies, and thus it does not support the notion that MCL 257.520 governs personal injury protection policies. Moreover, Bazzi entirely fails to discuss the specific language in the no-fault act explaining that a "motor vehicle liability policy" refers to a policy of liability insurance and not to personal injury protection policies. In fact, MCL 257.520 specifically limits its reach to "the insurance required by this chapter…." In other words, it applies only to insurance required by Chapter V of the Michigan Vehicle Code and not to personal injury protection benefits, which are governed by the Insurance Code. Bazzi's discussion ignores this language and *Titan*'s discussion of it. In contrast, the Court of Appeals correctly read *Titan* to give effect to this limiting language and to hold that fraud defenses are available unless some statutory language limits them, and the language limiting their use applies only to liability insurance, and not to personal protection benefits. Bazzi's discussion of fire coverage is also unhelpful since it relies on different statutes with different language and offers no guidance regarding the common law defense of rescission for fraud in the procurement of a no-fault policy for personal protection benefits.

Bazzi's discussion of MCL 500.3174 reaches a wrong conclusion largely because the brief ignores the complete text of MCL 500.3145, a closely related provision that provides a sliding time period for seeking benefits under the assigned claims plan. MCL 500.3174

requires a claimant to notify the assigned claims plan of the claim within the time frame for filing an action for personal protection benefits. Specifically, it provides:

> A person claiming through the assigned claims plan shall notify the Michigan automobile insurance placement facility of his or her claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The Michigan automobile insurance placement facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned. An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.

But MCL 500.3145, provides one year from the most recent allowable expense, work loss or survivor's loss that has been incurred if the notice was given. Specifically, it provides:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

This language makes clear that the notice is to be given to the insurer. But if the notice was given *or* a payment was made, the action may be commenced at any time within 1 year of

the most recent allowable expense, although payment is limited to one year back. Thus, if notice is timely given or payments made by the personal injury protection insurer, and then cease at some later point, "an action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred." MCL 500.3145. But the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. (*Id*.).

Reading the two statutes together makes it clear that the assigned claims plan is likely to be available in most instances. Moreover, as the Court of Appeals recognized in *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 228-29; 779 NW2d 304 (2009), the "Legislature is presumed to intend the meaning the statute expresses." (*Id*. at 228). The Court may not interpret the language differently because it "questions whether the Legislature intended the consequent of the language at issue." (*Id*. at 229). Michigan courts have recognized in both *Bronson Methodist Hospital* and *Dolson v Assigned Claims Facility, Secretary of State*, 83 Mich App 596, 599-600; 269 NW2d 239 (1978) that the No-Fault Act is intended to provide prompt relief "at the lowest cost to the system and the individual." 83 Mich App at 599 quoting *Shavers v Attorney General*, 65 Mich App 355, 370; 237 NW2d 325 (1975). In achieving that goal, the statute reflects various legislative balances and compromises which are not for the judiciary to alter.

E. The Court of Appeals decision effectuates rather than contravenes public policy because it is best found in the specific provisions of the no-fault act and not on the basis of subjective views of individual judges

Bazzi's final argument is that the Court of Appeals' opinion is inconsistent with the legislative goals of the No-Fault Act and the public policy behind them, that is, to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain

economic losses at the lowest cost to both the individual and the no-fault system. Bazzi is essentially relying on this "public policy" argument to modify the provisions of the act to add protections for purportedly innocent third parties. This Court rejected a similar argument in its decision in *Titan* when it discussed whether the "easily ascertainable" rule should be continued for the protection of third parties:

> there is simply no basis in the law to support the proposition that public policy requires a private business in these circumstances to maintain a source of funds for the benefit of a third party with whom it has no contractual relationship. While perhaps authority exists in the Legislature to enact such a law, see, e.g., MCL 500.3172 (pertaining to the Michigan Assigned Claims Facility), this authority has not been exercised by the Legislature in this instance.

491 Mich at 568. This Court further noted that the No-Fault Act provides protection for third parties in various ways, including through the Michigan Assigned Claims Facility, and that the "public is not powerless to protect itself against this situation" because insureds can purchase optional uninsured-motorist coverage, which "allows an insured to recover from his or her insurer to the extent that the insured would have been permitted to recover from an at-fault uninsured driver." 491 Mich 569 n 13. Equally important, this Court rejected the argument for creating such a rule given that it "alters first principles of contract formation, redefines the common law of fraud, reduces disincentives for insurance fraud, and transfers legal responsibility from parties that have acted fraudulently to parties that have not." 491 Mich at 569. These same considerations counsel against a judicially-created innocent third party rule here. Bazzi's repeated invitation to this Court to ignore the statutory language in favor of an ill-defined "public policy" is inconsistent with Michigan law and should be rejected as a basis for the decision in this case.

RELIEF

WHEREFORE, Defendant/Third-Party Plaintiff-Appellee Sentinel Insurance Company request this Court deny leave to appeal, issue any other relief this Court deems appropriate, and award costs and attorney fees so wrongfully sustained in defending this appeal.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Mary Massaron
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Dated: October 11, 2016

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STATE OF MICHIGAN

IN THE SUPREME COURT

ALI BAZZI,

Plaintiff-Appellant,

and

GENEX PHYSICAL THERAPY, INC. and ELITE CHIROPRACTIC CENTER, PC,

Intervening Plaintiffs-Appellants,

and

TRANSMEDIC, LLC,

Intervening Plaintiff,

v

SENTINEL INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

CITIZENS INSURANCE COMPANY,

Defendant,

v

HALA BAYDOUN BAZZI and MARIAM BAZZI,

Third-Party Defendants. /

Supreme Court No. 154442

Court of Appeals No. 320518

Lower Court No. 13-000659-NF
(Wayne Circuit Court)

INDEX OF EXHIBITS

Exhibit	***Description***
A	Provider Release of All Claims of Personal Protection Coverage
B	Stipulated Order of Dismissal of Genex Physical Therapy, Inc., Elite

	Chiropractic Center and Transmedic, LLC
C	State of Michigan Crash Report
D	Examination Under Oath of Hala Bazzi
E	Lease Worksheet
F	Examination Under Oath of Mariam Bazzi
G	*Tyronne Meyers* v *Transportation Services, Inc.*

EXHIBIT A

FOSTER SWIFT
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October 21, 2014

Mark F. Masters, Esq.
Secrest Wardle
2600 Troy Center Dr.
P.O. Box 5025
Troy, MI 48007

Re: Henry Ford Health System v The Hartford, and The Hartford v Hala Baydoun Bazzi, et al
Case No. 2013-007127-NF – Judge Lita Popke

Dear Mr. Masters:

Enclosed please find the fully executed Provider Release of all Claims of Personal Protection Insurance coverage in regard to the above-referenced matter. Please make the settlement draft payable to Henry Ford Health System, only and mail it to our office at the address shown above. Henry Ford Health System's Tax ID No. is: 38-1357020.

Thank you for your cooperation in regard to this matter. If you have any questions, please do not hesitate to contact our office at (248) 539-9909.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Sharon L. Green

Sharon L. Green, Legal Assistant to
Paul J. Millenbach

/slg
Enclosure

50028:01873:2045649-1

PROVIDER RELEASE OF ALL CLAIMS OF PERSONAL PROTECTION INSURANCE COVERAGE

Provider:	Henry Ford Hospital
Insured(s):	Ali Bazzi
Claim Number:	46-12-004453
Date of Loss:	August 8, 2012

Provider, Henry Ford Hospital and The Hanover Insurance Company, Citizen's Insurance Company of America, and all of its subsidiaries and affiliates, and any and all of their agents, servants, successors, heirs, executors, administrators and employees, corporations, subsidiaries, affiliates, firms, predecessors and successors, and the Michigan Assigned Claims Plan (RELEASEES) enter into this Release Agreement as follows:

WHEREAS;

A. The undersigned desires to settle and compromise all claims between provider and Citizens for treatment rendered to the above insured(s), including but not limited to, the claims that could have been asserted in the civil actions referred to above, pursuant to the terms and conditions as set forth in this Release Agreement;

B. For and in consideration of the sum of the sum of Twenty Seven Thousand and 00/100 ($27,000.00) Dollars, Provider does hereby release and forever discharge Citizens and their above insured(s) from all claims for any and all outstanding medical bills relative to the medical treatment provided to the insureds above through October 27, 2012, only;

C. Specifically, but without limitations to the items herein specified, Provider does hereby release and forever discharge Citizens, its successors, assigns, agents, insureds, employees, representatives, and investigators, from any type of claim related to this loss. This also releases Citizens from all interest charges, attorney fees, or other costs as may be provided for by the "No-Fault Statute" in the State of Michigan;

D. The undersigned, and in further consideration for this Release Agreement, hereby waives any claim or cause of action under the insured's no fault policy of coverage, and any Michigan statute including but not limited to, the Michigan Consumer Protection Act and the Uniform Fair Trade Practices Act;

E. The undersigned provider also agrees that if it has billed, receives, or later receives any monies from any other source, including but not limited to the insured, private health carriers, automobile carriers , Medicaid or Medicare, that it will refund monies to those entities, but only for the specific dates of services alleged against Citizens in this agreement. The undersigned Provider will defend, indemnify, and hold harmless Citizens from any claim of recoupment from any such entity, but only for the specific dates of services released as indicated above;

Ali Bazzi

F. It is further understood that no promise, inducement, agreement not herein expressed has been made to Provider, and that this Release Agreement contains the entire agreement between the parties hereto, and that the terms of this Release Agreement are contractual and not a mere recital;

G. It is further agreed that this settlement is a compromise of a disputed claim or claims and that any payment or payments made hereunder are not to be construed as an admission of liability or indebtedness on the part of Citizens to Provider, to whom all liability for indebtedness is expressly denied. No terms or condition contained within any check or draft tendered in satisfaction hereof shall modify, alter, or expand the terms and conditions of this Release Agreement;

IN WITNESS HEREOF, I have set my hand and seal this 17th day of October 2014.

Tom Provencal

Authorized representative of Provider
Henry Ford Hospital

By: Tom Provencal

Its: Legal Account Representative

Subscribed and sworn before me this 17th day of October, 2014

Sharon L. Green

SHARON L. GREEN, Notary Public

My Commission Expires: 06/01/2016

By: _____

EXHIBIT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ALI BAZZI,

Plaintiff,
and

GENEX PHYSICAL THERAPY, INC., ELITE CHIROPRACTIC CENTER, P.C., and TRANSMEDIC, L.L.C. (Ali Bazzi),

Intervening Plaintiffs,

v.

SENTINEL INSURANCE COMPANY and CITIZENS INSURANCE COMPANY,

Defendants.

and

CITIZENS INSURANCE COMPANY,

Cross-Plaintiff,

v.

SENTINEL INSURANCE COMPANY,

Cross-Defendant,

and

SENTINEL INSURANCE COMPANY,

Third-Party Plaintiff,

v.

HALA BAYDOUN BAZZI and MARIAM BAZZI,

Third-Party Defendants.

Case No. 13-000659 NF
Hon.: Lita Masini Popke

/

GARY R. BLUMBERG (P29820)
Attorney for Plaintiff, Third-Party Defendants, and Intervening Plaintiffs Genex and Elite Chiro.
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JOHN D. RUTH (P48540)
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Bloomfield Hills, MI 48302
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jruth@a-mlaw.com

/

STIPULATED ORDER OF DISMISSAL

At a session of said Court held in the City of Detroit, County of Wayne, State of Michigan on 12/16/2014

PRESENT: HONORABLE: Lita M. Popke
CIRCUIT COURT JUDGE

Upon stipulation of the parties,

IT IS HEREBY ORDERED that the claims of Plaintiff (Ali Bazzi) and intervening Plaintiffs (Genex Physical Therapy, Inc., Elite Chiropractic Center, P.C., and Transmedic, LLC) against SENTINEL INSURANCE COMPANY are Dismissed with prejudice and without costs up to the date of September 24, 2014,

IT IS FURTHER ORDERED that any claims of Plaintiff (Ali Bazzi) and intervening Plaintiffs (Genex Physical Therapy, Inc., Elite Chiropractic Center, P.C., and Transmedic, LLC) against SENTINEL INSURANCE COMPANY incurred after the date of September 24, 2014 are not waived,

IT IS FURTHER ORDERED that Third-Party Plaintiff SENTINEL INSURANCE COMPANY's remaining claims against Third-Party Defendants HALA BAYDOUN BAZZI and MARIAM BAZZI are dismissed with prejudice and without costs.

IT IS FURTHER ORDERED that the September 19, 2013 Default Judgment as it pertains to rescission of the insurance policy at issue remains in effect,

IT IS FURTHER ORDERED that this Order does not in any way affect the pending appeal in this matter.

This order does not resolve the last pending claim nor close the case.

/s/ Lita M. Popke

CIRCUIT COURT JUDGE

Approved as to form and substance,

/s/ Gary R. Blumberg (w/ consent)
GARY R. BLUMBERG (P29820)
Attorney for Plaintiff, Intervening Plaintiffs Elite and Genex, and Third-Party Defendants

/s/ Kenneth A. Tardie (w/ consent)
KENNETH A. TARDIE (P25044)
Attorney for Intervening Plaintiff TransMedic

/s/ Mark M. Masters
MARK F. MASTERS (P48598)
Attorney for Defendant/Third-Party Plaintiff Sentinal

/s/s John D. Ruth (w/ consent)
JOHN D. RUTH (P48540)
Attorney for Citizens Insurance

2894816_1

EXHIBIT C

Authority: 1949 PA 300, Sec.257.622
Compliance: Required MSP UD-10E
Penalty: $100 and/or 90 days (Rev 11/2006)

External #: 0133483 | Crash ID: 8065762

Incident # 25-2275-11 File Class 93001

STATE OF MICHIGAN TRAFFIC CRASH REPORT

Incident Disposition	Closed
ORI	MI 8202500
Department Name	MSP Metro South
Reviewer	K PEGOUSKE
Crash Date	07/03/2011
Crash Time	16:12
No. of Units	01
Crash Type	Single Motor Vehicle
Special Circumstances	● None ○ Deer ○ School Bus ○ Hit and Run ○ Fleeing Police
Special Checks	○ Fatal ○ Non-Traffic Area ○ ORV/Snowmobile
County	82 - Wayne
Traffic Control	None
Relation to Roadway	Outside of shoulder/curb
Special Study	
Weather	Clear
Area	06 - All other freeway areas
City/Twsp	14 - Van Buren Twp
Construction Zone (if applicable) Type / Lane Closed / Activity	
Light	Daylight
Road Condition	Dry
Total Lanes	03
Speed Limit	70
Posted	Yes

LOCATION

Prefix	E
Road Name	I-94
Road Type	HWY
Suffix	
Divided Roadway	E
Distance	2,640 Feet W
Traffic Way	03 - Divided Hwy with barrier
Access Control	02 - Full access control
Prefix	
Intersecting Road	BELLEVILLE
Road Type	RD
Suffix	
Divided Roadway	

DRIVER / VEHICLE INFORMATION

Unit Number	01
Unit Known	Yes
State	MI
Driver License Number	B200048298789
Date of Birth (Age)	10/13/1991 (19)
License Type	● Operator ○ Chauffeur ○ Moped
Endorsements	○ Cycle ○ Farm ○ Recreation
Sex	M
Total Occupants	02
Hazardous Action	14 - Unknown
Unit Type	MV
Driver Information	ALI HASSAN BAZZI 14391 TIREMAN BLVD DEARBORN, MI 48126
Injury	C
Position	01
Restraint	04
Hospital	NONE
Driver Condition	●1 ○2 ○3 ○4 ○5 ○6 ○7 ○8 ○9 ○99
Interlock	No
Ejected	
Trapped	
Airbag Deployed	Yes
Ambulance	HURON VALLEY AMBULANCE, INC
Alcohol	○ Yes ● No ○ Refused ● Not offered
Alcohol Test Type	○ Field ○ PBT ○ Breath ○ Blood ○ Urine
Alcohol Test Results	
Drugs	○ Yes ● No
Drugs Test Type	○ Blood ○ Urine
Drugs Test Results	
Citation Issued	○ Hazardous ○ Other
Vehicle Registration	CFM7455
State	MI
Insurance / Policy #	
Towed To/By	J/T CROVA
Special Vehicles	0
Private Trailer Type	
Vehicle Defect	
VIN	19XFA1F57BE017341
Vehicle Description	2011
Make / Model	HONDA 4D
Color	GRY
Year	
Vehicle Type	Passenger Car
Location of Greatest Damage	10
First Impact	03
Extent of Damage	7
Driveable	No
Vehicle Direction	E
Vehicle Use	01 - Private
Action Prior	01 - Going Straight Ahead
Sequence of Events (● indicates MOST harmful event)	First: 01 - Loss of control; Second: 04 - Ran off roadway-right; Third: ●39 - Tree; Fourth:

PASSENGERS

Passenger Information	Date of Birth (Age)	Sex	Position	Restraint	Hospital	Injury	Airbag Deployed	Ejected	Trapped	Ambulance
DIALA SUKARI 6407 KENDAL ST DEARBORN, MI 48126	10/12/1984 (26)	F	03	05	SAINT JOSEPH MERCY SALINE HOSPITAL	A	Yes		Yes	NONE

TRUCK/BUS

Carrier Information	
Carrier Source	
GVWR	
ICCMC	
USDOT	
MPSC	
Driver's CDL Type	
Endorsements	○H ○P ○T ○N ○S ○X
CDL Exempt	○ Farm ○ Other
CDL Restrictions	○28 ○29 ○30 ○35 ○36
Interstate/Intrastate	
Vehicle Type	
Type & Axle Per Unit	First / Second / Third / Fourth
Cargo Body Type	
Medical Card	
Hazardous Material	○ Placard ○ Cargo Spill
ID #	
Class #	

OWNERS

Owner Information	Owner Information

Person Advised of Damaged Traffic Control	Contact Name: Contact Date: Contact Time:
Damaged Property	
Public	
Owner & Phone	

Unit Number | Unit Known | State Driver License Number | Date of Birth (Age) | License Type: O Operator O Chauffer O Moped | Endorsements: O Cycle O Farm O Recreation | Sex | Total Occupants | Hazardous Action

Unit Type | Driver Information | Injury | Position | Restraint | Hospital

Driver Condition: O1 O2 O3 O4 O5 O6 O7 O8 O9 O89 | Interlock | Ejected | Trapped | Airbag Deployed | Ambulance

Alcohol: O Yes O No O Refused O Not offered | Test Type O Field O PBT O Breath O Blood O Urine | Test Results

Drugs: O Yes O No | Test Type O Blood O Urine | Test Results | Citation Issued: O Hazardous O Other

Vehicle Registration | State | Insurance / Policy # | Towed To/By | Special Vehicles | Private Trailer Type | Vehicle Defect

VIN | Vehicle Description | Make | Model | Color | Year | Vehicle Type

Location of Greatest Damage | First Impact | Extent of Damage | Driveable | Vehicle Direction | Vehicle Use | Action Prior

Sequence of Events (● indicates MOST harmful event) | First | Second | Third | Fourth

PASSENGERS

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint | Hospital | Injury | Airbag Deployed | Ejected | Trapped | Ambulance

CARRIERS

Carrier Information | Carrier Source | GVWR | ICCMC | USDOT | MPSC

Driver's CDL Type | Endorsements: OH OP OT ON OS OX | CDL Exempt: O Farm O Other | CDL Restrictions: O 28 O 29 O 30 O 35 O 36

Interstate/Intrastate | Vehicle Type | Type & Axle Per Unit: First Second Third Fourth | Cargo Body Type | Medical Card | Hazardous Material: O Placard O Cargo Spill | ID # | Class #

OWNERS

Owner Information | Owner Information

WITNESSES

Witness Information | Witness Information

Investigated at Scene	Reported Date (Time)	1st Investigator Name (Badge)	2nd Investigator Name (Badge)	Photos By
Yes	07/03/2011 (16:15)	M J CAHALAN (1702)		

Narrative

According to witnesses V-1 was E/B on I-94 travelling in the center lane at below the posted speed limit. V-1 suddenly and for no appearent reason veared to the right, left the road way and struck a tree. Driver of V-1 advised same.

Diagram

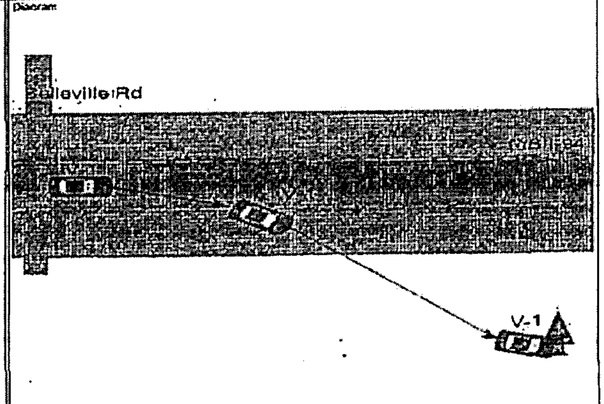

EXHIBIT D

STATE OF MICHIGAN

RE

Insured: Ali Bazzi

Claim Number: YKQAF47450

Date of Loss: August 8, 2012

_____/

PAGE 1 TO 71

The Examination Under Oath of HALA BAZZI

Taken at 2600 Troy Center Drive

Troy, Michigan

Commencing at 10:45 a.m.

Friday, February 1, 2013

Before Kathryn E. Lock, CSR 7736

APPEARANCES:

DAVID J. JARRETT (P54729)
David J. Jarrett, P.C.
12820 Ford Road, Suite 1
Dearborn, MI 48126
313-943-3113
jarrettdav@aol.com
Appearing on behalf of the Plaintiff.

MARGARET A. SCOTT (P41641)
Secrest Wardle
2600 Troy Center Drive
Troy, MI 48084
248-851-9500
mscott@secrestwardle.com
Appearing on behalf of the Defendant.

ALSO PRESENT:

Skip Ward - The Hartford representative

A. Yes.
Q. And the code on the front of the license is X, as in x-ray, 054144. There appears to be a change of address on the back of the operator's license. The address now is 6444 Chase, Dearborn, 48126. We gave you your driver's license back, do you have it?
A. Yes, I got it.
MR. JARRETT: Again, it's really important that she finishes talking before you start, okay?
THE WITNESS: Yes.
BY MS. SCOTT:
Q. How long have you been at the Chase address?
A. Since September.
Q. Of last year?
A. 2012.
Q. Where did you live before that?
A. Tireman. 14931.
Q. So at the time your son was involved in his most recent accident you lived on Tireman?
A. Tireman.
Q. The same people that we talked about were the same people that lived with you on Tireman?
A. Yes, ma'am.
Q. Were those same people also in your household when you lived on Neckel?

Q. Mimo has no bank account of any kind, am I right?
A. No.
Q. I'm correct?
A. Yes, you're right. We're not operating the business under Mimo directly, ma'am. There's a lease paper between Soukeina and Mimo, this is the way the accounting set it. So Mimo basically is leasing from -- Soukeina is leasing from my mom this is the way it works. I don't know about these things.
Q. Who would?
A. The accounting.
Q. Who's the accounting?
A. Bazzi Accounting. If we open another gas station ma'am, it's also going to be under Mimo. Leasing from Mimo.
Q. So you'll continue to insure vehicles under a commercial policy then?
A. Of course. If I'm using my car there, this is what's the opinion of the agent who -- I wasn't even thinking about putting anything --
Q. Who is your accountant?
A. You asked me, ma'am. He's Bazzi Accounting.
Q. I need a name of a person.
A. Hussein Bazzi.
Q. Can you spell Hussein?

there.

Q. Were you involved with getting Ali Baydoun the information he needed to get you an insurance policy on the cars?

A. Yeah, he asked me about the business address. The phone number and about the driver's license. So I give him all what he need.

Q. He asked you the questions, you answered the questions, correct?

A. Yeah. Whatever he wants. I give him the information.

Q. How do you pronounce your daughter's name?

A. Mariam.

Q. Was Mariam involved in answering Ali Baydoun's questions so he could obtain the insurance?

A. There was no major questions, ma'am. He asked me about the address, about the -- again, this is all what he ask me. What I gave him. We went back.

Q. Who's "we"?

A. Me and my daughter went back to sign the paper and the front desk --

Q. Which daughter?

A. Mariam. She didn't meet Ali by herself. He prepared the policy and we signed the paper for him. She signed it.

Q. You said we signed it?
A. I mean she signed it but we went together. I took the driver's license, copy from my husband, because he was at work. I give the lady, the girl there, mine and my daughter give her mine and she signed the policy and we went out.
Q. Did you ever give the insurance policy your daughter's driver's license?
A. Of course.
Q. Did you give Ali Baydoun Kamel's driver's license?
A. No.
Q. Did you give Ali Baydoun Ali Bazzi's driver's license?
A. No, ma'am. Because Ali wasn't at our home. Why should I add him to the policy? Why should we give him the ID? He's not at our home.
Q. Did your companies ever insure motor vehicles with anyone other than The Hartford?
A. Never. With CNA. Yeah, before with the CNA. I'm sorry. And Ali transferred all the information, I still remembered. I didn't need that information and details because he had all the information in the other file in the CNA. From the CNA he transferred everything.

So the second time with Hartford I didn't

need that much time with Ali. I still remember he told me I still have all the information so I can transfer it from the CNA to The Hartford. Don't worry about it. That's why he need the signature. He prepare the paper and left them with the lady in front so my daughter signed it. I still remember exactly, ma'am, what happened.

Q. Good. Then tell me why.

A. Why what?

Q. Why switch from the CNA to Hartford?

A. Because we were done with them.

Q. I don't understand.

A. One year. It's a one-year policy.

Q. Why didn't you re-up the policy?

A. I didn't want to re-up it. My son had an accident a them also.

Q. So they knew about your son at that point?

A. Yes, of course.

Q. Did they know about your son before the accident?

A. Who?

Q. CNA.

A. No, he wasn't living with us at the time. He was living by himself, ma'am. For almost a year. He wasn't living at us when the accident occurred, why should I put him as a driver on our policy? He's not

living with us.
Q. Did you disclose anyone other than you and your husband to the insurance company The Hartford when you obtained the insurance with that company in April of 2012?
A. What do you mean by that, ma'am?
Q. Did you disclose any other drivers to The Hartford when you initiated the policy in April of 2012?
A. No, me and my husband and duty, all three of us on the policy. We're only drivers at home at that time. Who should I add?
Q. What vehicles did you insure with The Hartford?
A. I insured the CRV and the 2011 and the other car that the accident occurred in and there's a -- the Mustang, '94 also.
Q. Are you currently insured with The Hartford?
A. Yes.
Q. Are you still doing business as Mimo Investment?
A. We closed the corporation like last week. We sold the business and everything a couple months ago.
Q. Has The Hartford been notified of that?
A. No.
Q. Why not?
A. I don't know that I should inform them. Also the policy is done. This is my last payment. Or next

Q. Any other cars?
A. I told you before ma'am, I don't remember if the Pilot was there or not. Or if we sold it before. I don't remember exactly. It could be two or three.
Q. That's fine. And you gave all the information to Ali Baydoun on what cars needed to be insured, correct?
A. Yes.
Q. How many drivers were disclosed to Ali Baydoun?
A. Three.
Q. Have any other cars been insured with any other business by Soukeina or Mimo?
A. No.
Q. Have we mentioned all the cars?
A. Yes.
Q. Who took part in the lease of the two-door car that was involved in the accident?
A. What do you mean who took part?
Q. Who went to the dealership?
A. Me, my uncle, I don't remember if my daughter was with us. He was the cosigner. I think she was with us. No, no, she wasn't with us. Me and my uncle.
Q. How did you find that dealership? Why that dealership?
A. Lafontaine was one of our friends, she told me about it and I went there.

at your gas station?
A. No, because mostly it's a family thing and this guy. So no one is cheating me. I don't go after them in minutes and seconds. Basically I'm going to be more strict if there was like stranger people there.
Q. It's your testimony that the very first time that your son Ali did work at the gas station was in May of 2012?
A. No, he used to help before that. He used to work there before.
Q. Who would have access to those payroll journals?
A. This paper? No one can print them other than accounting. After the information I gave to the accounting.
Q. And they have to rely on what you tell them, right?
A. Yes.
Q. Who's responsible for paying the bills related to the gas station?
A. I am, ma'am.
Q. Are there any bills in the name of Mimo Enterprises? I'm sorry, Mimo Investments?
A. No, ma'am. No.
Q. Does any money go from Soukeina Enterprises to Mimo Investment?
A. (NO VERBAL RESPONSE).

Q. Pardon me?
A. No.
Q. Does any money go from Mimo to Soukeina?
A. No.
Q. Were you involved in coming up with Mimo Investment, LLC?
A. No.
Q. Who's idea was that?
A. Accounting. He told me this is the way we set up. I told him we're interested to have a chain of business for our kid, he told me let's make it this way and later on you can add as many corporations as you like.
Q. When you changed the insurance from CNA to the Hartford why did you change the name from Soukeina no Mimo?
A. I don't know. The agent ask me. Do you have any other business name or anything. I told him yes.
Q. Why did he want to change the name?
A. I don't know. This is his job. I don't know. I don't have any information about the insurance.
Q. At the time you got the insurance from The Hartford you were already involved in a claim with CNA, weren't you?
A. Yes.

Q. So after the motor vehicle accident that he had that was covered by CNA where he was operating one of your vehicles on a commercial policy you continued to allow him to drive your vehicles that were insured under commercial policies, correct?

A. Once or twice a week and under my supervision.

MR. JARRETT: Correct or not correct? "Yes" or "no"?

THE WITNESS: She's saying all the time. This is what I'm understanding.

MS. SCOTT: I didn't say all the time.

MR. JARRETT: She didn't say that.

THE WITNESS: Okay, this is what I'm understanding. Becomes I wasn't considering him driving the whole time. Like when I let him do it, when I tell him to do it he's allowed to do it. This is my answer.

BY MS. SCOTT:

Q. You continued to allow him to drive the vehicles, correct?

A. Yes. This is what you want.

Q. And you failed to disclose him to the insurance company, correct?

A. He wasn't --

Q. Did you disclose him to the insurance company?

A. No.
Q. Did you disclose Kamel to the insurance company?
A. Kamel is not living with me.
Q. Did you disclose Kamel to the insurance company?
A. No.
Q. Are you aware that when you initiated the policy in April of 2012 with The Hartford using Ali Baydoun that you also insured a Crown Victoria?
A. Yes.
Q. Why haven't you told me about that car?
A. I forgot completely. I swear.
Q. Because that car is not used for the business, is it?
A. Yes, it is.
Q. Then how could you forget it?
A. I forgot it, ma'am.
Q. You forgot it because the car is actually used by Kamel, correct?
A. It wasn't used by him. It was used by my husband most of the time.
Q. So if there was prior testimony that was taken under oath that the vehicle was used by Kamel you disagree with that testimony?
A. It's used by Kamel. Kamel and my husband for work.
Q. Isn't it true that the police interceptor Crown Victoria was used by Kamel?

go off often, ma'am. Just doctor visit. He all the time home with my mom and always at home.

Q. How many bases do you have to the baby seat?

A. One.

Q. So if you move the seat you have to move the base? You have to take the base with you to use it in another car, right?

A. Yes.

Q. And your husband drove the two-door?

A. Sometimes, yes.

Q. You drove the two-door?

A. Yes, of course.

Q. And Mariam drove the two-door?

A. No. I remember the whole time she drove it just once. This car.

Q. How many times did Ali drive it?

A. I can't remember. I don't want to answer something that's wrong. So at the most it was like -- the most I can let him drive it, twice a week. Not more than that.

Q. So from the time that you got the car in March until the time he crashed it in August he averaged twice a week driving that car?

A. This is the average, yes.

Q. Where was the car kept normally, the two-door?

ma'am. I don't know. I don't know nothing about it. That it's not allowed to do all these things with.

Q. I'd be correct if I stated that you chose to save money by using the commercial policy, correct?

A. Not that I choose it. Don't put words in my mouth, please. He gave me a good price and that's why I told him go ahead.

Q. You chose to do that, correct?

A. He offered me a good price and went with them.

Q. And you accepted that?

A. I accepted that because it's a good thing for me.

Q. Did you tell him no, I don't want to do that?

A. Why should I? Is it illegal to do?

Q. It's illegal to lie to the insurance company.

A. I didn't lie for him. Excuse me, ma'am. What did I provide him something wrong? Or I lied to him? He lied to me.

Q. Can you tell me whether or not the two-door vehicle that was destroyed by your son when he was speeding over a hundred miles an hour had ever been taken to the dealership for work?

A. No, I don't take it there for work. I change the oil change at any place there. On Tireman, Oakman. Why should I take it there?

Q. Your testimony is the vehicle was never taken back to

EXHIBIT E

HONDA
Financial Services

Leadership Leasing

LEASE WORKSHEET — MICHIGAN

Lease Date: 02/29/2012

LESSEE(S) (Print Name & Address)	VEHICLE GARAGING ADDRESS (If different)	LESSOR (Dealer)
HALA BAYDOUN BAZZI 14931 TIREMAN ST DEARBORN MI 48126 WAYNE AHMAD MOHANAD BAZZI	N/A N/A N/A N/A N/A (313)634-9245	LAFONTAINE HONDA 2245 S. TELEGRAPH DEARBORN MI 48124 208200

By signing this Lease, Lessee(s) ("I", "my", "me") agree to lease the Vehicle, described below, according to the terms on both sides of this Lease. I accept delivery of the Vehicle and acknowledge that it is in good operating order, equipped as described and has the odometer reading recorded below. "Lessor" refers to the Lessor ("Dealer") named above and Assignee, American Honda Finance Corporation (AHFC) will administer this Lease.

Assignee: HONDA LEASE TRUST — LEASE TERM: 36 MONTHS.

VEHICLE DESCRIPTION

New/Used	Year/Make/Model	Body Style	Vehicle Identification Number	Odometer Reading	Primary Use
N	2012 HONDA CIVIC	2DR	2HGFG4A59CH700883	10	[X] Personal, Family, or Household; [ ] Business, Commercial, Agricultural, or Lease to an organization or governmental entity

Including Standard Manufacturer Installed Features (unless replaced by Upgraded equipment) and the Following Dealer Installed Options:
___Air Conditioning ___Leather Interior ___Power Moonroof ___Custom Wheels ___Rear Wing Spoiler ___Alarm System
Audio System Includes: ___AM/FM Stereo ___AM/FM Stereo with Cassette Player ___Cassette Player ___CD Changer ___CD Player
Other Dealer Installed Options: N/A

FEDERAL CONSUMER LEASING ACT DISCLOSURES

AMOUNT DUE AT LEASE SIGNING (Itemized Below)*	MONTHLY PAYMENT/SINGLE PAYMENT	OTHER CHARGES (not part of my monthly payment)	TOTAL OF PAYMENTS (The amount I will have paid by the end of the Lease)
$ 2000.01	My first monthly payment of $ 374.95 is due on 02/29/2012 followed by 35 payments of $ 374.95 due on the 1st of each month. The total of my monthly payments is $ 13400.20 My single payment of $ N/A is due on N/A	Disposition Fee (If I do not purchase the Vehicle) $ 0 Total $ 0	$ 15525.20

*ITEMIZATION OF AMOUNT DUE AT LEASE SIGNING

Amount Due at Lease Signing		New the Amount Due at Lease Signing will be Paid	
Capitalized Cost Reduction (Amount Paid in Cash)	1167.19	Credit for Net Trade-In Allowance: Year N/A Make N/A	N/A
Sales/Use Tax on Amount Paid in Cash	70.03	Rebates: N/A	N/A
Capitalized Cost Reduction (Credit for Net Trade-In Allowance)	N/A	Noritech Credits: N/A	N/A
Sales/Use Tax on Credit for Net Trade-In Allowance	N/A	Amount Paid By: N/A	N/A
Advance Monthly Payment (1st Month)	374.95	Amount to be Paid in Cash:	2000.01
Advance Single Payment (1 Single Payment Lease)	N/A	TOTAL	2000.01
Refundable Security Deposit	N/A		
Initial Title Fees	15.00		
Initial Registration Fees: E-FILE	170.00		
Other: N/A	N/A		
Other: DOC FEE (INCL TAX)	201.40		
Other: E-FILE TAX	1.44		
TOTAL	2000.01		

ITEMIZATION OF LEASE DISCLOSURES

GROSS CAPITALIZED COST: 26470.00

For an itemization of this amount, please check this box: ☐
The agreed upon value of the Vehicle ($ 25375.00) and any items I pay for over the Lease Term (such as taxes, fees, service contracts, insurance, and any outstanding prior credit or lease balances).

CAPITALIZED COST REDUCTION: 1167.19

ADJUSTED CAPITALIZED COST: 25302.81

RESIDUAL VALUE: 13706.00

DEPRECIATION AND ANY AMORTIZED AMOUNTS: 11596.81

RENT CHARGE: 1137.60

TOTAL OF BASE PAYMENTS: 12734.41

LEASE PAYMENTS: 36

BASE MONTHLY/SINGLE PAYMENT: 353.73

MONTHLY SALES/USE TAX: 21.22

SALES/USE TAX (SINGLE PAYMENT): N/A

OTHER: N/A: N/A

TOTAL MONTHLY/SINGLE PAYMENT: $ 374.95

ANNUAL MILES: 15000

CHARGE PER EXCESS MILE: 15 cents

END OF TERM PURCHASE PRICE: $ 13706.00

ITEMIZATION FOR GROSS CAPITALIZED COST

Selling Price of Base Vehicle	25375.00
Dealer Installed Options (as described) N/A	N/A
N/A	N/A
N/A	N/A
N/A	N/A
Enhancement Products (as described) N/A	N/A
N/A	N/A
Agreed Upon Value of Vehicle	25375.00
Acquisition Fee	595.00
Outstanding Prior Credit or Lease Balance	N/A
Value of Sales Tax	N/A
Optional Service Contract	N/A
Other: N/A	N/A
Other: AFI	500.00
Gross Capitalized Cost	26470.00

RENT CHARGE CALCULATION

Adjusted Capitalized Cost plus Estimated Residual Value	39008.81
Times Rent Charge Payment Factor	x 0.00810
Monthly Rent Charge	= 31.60
Times Number of Payments	x 36
Total Rent Charge	= 1137.60

ADJUSTMENTS FOR LOW MILEAGE

Maximum Mileage at Inception	N/A
Less Current Odometer Reading	- N/A
Total Low Mileage	= N/A
Times Credit per Low Mile	x N/A
Adjustment for Low Mileage	= N/A

ADJUSTMENTS FOR EXCESS MILEAGE

Current Odometer Reading	199
Less Maximum Mileage at Inception	- 200
Current Inception Mileage (M)	= N/A
Anticipated Annual Mileage	15000
Less Annual Mileage Allowance	- 15000
Annual Excess Mileage	= N/A
Times Lease Term ÷ 12	x N/A
Anticipated Excess Mileage (M)	= N/A
Total Excess Mileage (M+N)	N/A
Times Charge per Excess Mile	x .10
Adjustment for Excess Mileage	= N/A

RESIDUAL CALCULATION

MSRP of Base Vehicle	24475.00
Dealer Installed Options	+ N/A
Estimated Current Value	= 24475.00
Times Residual Percentage 56%	x = 13706.00
Plus Low Miles Lease Adjustment	+ N/A
Plus Adjustment for Low Mileage	+ N/A
Less Adjustment for Excess Mileage	- N/A
Estimated Residual Value	= 13706.00

ESTIMATED OFFICIAL FEES & TAXES

Sales/Use Tax During Lease Term	$ 846.79
Title/License/Registration/Official Fees During Lease Term	+ 477.00
Personal Property Other Taxes During Lease Term	+ N/A
Total Estimated Fees and Taxes	$ 1323.79

TO ENSURE PROMPT FUNDING

Submit the following with the lease package:

- ☐ Lease Credit Application / Business Application, as applicable.
- ☐ Copy of Application for Title and/or Registration.
- ☐ Copy of Tax Receipts, if advanced.
- ☐ Copy of Factory Invoice / Copy of Federal Sticker / Used Vehicle Certification.
- ☐ Copy of Due Bill(s) / Repair Order(s).
- ☐ Copy of Service Contract(s), if applicable.
- ☐ Corporate Resolution / Partnership Authorization, if applicable.

OPTIONAL DEALER CALCULATIONS

CALCULATION OF DEALER ADVANCE

Adjusted Capitalized Cost	$ 25302.81
Less Acquisition Fee	- 595.00
Less Advance Monthly/Single Payment	- 353.73
Less Security Deposit	- N/A
Less Tax on Capitalized Cost Reduction	- N/A
Total Dealer Advance Amount	= 24354.08

CALCULATION OF DEALER PARTICIPATION

Monthly Rent Charge Payment Factor	0.00810
Less Monthly AHFC Rent Charge Factor	- N/A
Dealer Participation Rent Charge Factor	= 0.00810
Times Adjusted Capitalized Cost plus Estimated Residual Value	x 39008.81
Monthly Participation	= 31.60
Times Number of Payments	x 36
Total Participation	= 1137.60
Times Interest Percentage	x N/A
Interest Participation	= 100.00

COMMENTS AND WORK SPACE

LB MD-MH 03/07

AMERICAN HONDA FINANCE CORPORATION AHFC

EXHIBIT J

EXHIBIT F

STATE OF MICHIGAN

RE

Insured: Ali Bazzi

Claim Number: YKQAF47450

Date of Loss: August 8, 2012

_____/

PAGE 1 TO 56

The Examination Under Oath of MARIAM BAZZI

Taken at 2600 Troy Center Drive

Troy, Michigan

Commencing at 9:10 a.m.

Friday, February 1, 2013

Before Kathryn E. Lock, CSR 7736

APPEARANCES:

DAVID J. JARRETT (P54729)
David J. Jarrett, P.C.
12820 Ford Road, Suite 1
Dearborn, MI 48126
313-943-3113
jarrettdav@aol.com
Appearing on behalf of the Plaintiff.

MARGARET A. SCOTT (P41641)
Secrest Wardle
2600 Troy Center Drive
Troy, MI 48084
248-851-9500
mscott@secrestwardle.com
Appearing on behalf of the Defendant.

ALSO PRESENT:

Skip Ward - The Hartford representative

Q. Your mother is not the resident agent, correct?
A. I'm sorry?
Q. Is your mother the resident agent?
A. No, I'm the owner. But she takes care of all the paperwork which is inclusive of the accounting. So the accounting put it that way. That Soukeina Enterprises would be under Mimo. Because initially we opened Mimo and we wanted to do a chain of gas stations, so that way every child in the family would have his own business, source of income for later on. But economy is down, work was slow. It's terrible lately, actually. That's why we ended up closing both.
Q. What work did Mimo do?
A. Mimo does not do any physical work. It's actually Soukeina.
Q. So the business of Mimo is to merely be a name out there and Soukeina is the gas station?
A. Yes, Soukeina is under Mimo.
Q. And I don't -- I don't mean to -- what do you mean under Mimo?
A. Okay, I had told you initially we had started with Mimo Investment. Then it was Soukeina Enterprises. Mimo Investment we started hoping we would start a chain of gas stations with different names of course.

money.
Q. You take cash?
A. Yeah, I take cash. Usually everything that has to do with the bank, depositing, withdrawal, my mother takes care of that. Because I don't have time.
Q. So if you needed pocket money you could go --
A. Yes, it's a gas station --
Q. Let me finish, honey. I just want to make sure we all understand. You could go to the gas station, you open the door, you go behind the counter, you open the cash register, you take cash out and you can use that money?
A. Yes. And I record that down.
Q. Could you list for me the individuals who were employees of Mimo Investment, LLC?
A. Soukeina is the same as Mimo, it's under Mimo.
Q. Was there any person who received a paycheck from Mimo Investment, LLC?
A. No.

MR. JARRETT: I'm going to say it again, Mariam. Please let her finish talking. Please.

THE WITNESS: I have that bad habit, I apologize.

BY MS. SCOTT:
Q. Was there an account of any kind kept by Mimo

and I don't know what way they are going to take it after that.

Q. The vehicle your brother was operating was a vehicle insured by Soukeina Enterprises?

A. Yes, it was a business vehicle.

Q. And the name on the vehicle, the purchaser, was not Soukeina Enterprises?

A. No, it was me. It's a lease from Honda.

Q. So you'd actually leased a vehicle before for a business but you didn't use the business name, right? To lease the vehicle?

A. No, no, no. I leased it under my name.

Q. Why?

A. I just leased it personally and it was the agent's opinion to put it under business.

Q. Why?

A. I have no clue. You'd have to ask him. My mom usually takes care of that and she told them that we have these cars and we have a business, so he said I'll give you a good deal and I'll make the policy for you and that's what he did. So I don't know why he did that, you'd have to ask him.

Q. Any vehicle that you've owned in the past three years, has it ever had a personal insurance policy?

A. No.

prior to getting the insurance with The Hartford?
A. How many losses?
Q. Yes.
MR. JARRETT: Claims.
THE WITNESS: Just one, with CNA.
BY MS. SCOTT:
Q. How many of the vehicles that were insured by The Hartford were not owned or registered by Mimo?
A. None.
Q. Is it you're understanding that the registration on the vehicle that was involved in the August 2012 accident was registered by Mimo Investment, LLC?
A. Yes.
Q. Is it your understanding that the lease on the vehicle was in the name of Mimo, LLC?
A. No, the last was under my mother's name.
Q. So you are aware that there is a vehicle that is being insured by Mimo that is not owned by Mimo?
A. Yes.
Q. I believe we started, you told us that Mimo Investment was the head of Soukeina Enterprises, correct?
A. Yes.
Q. You would agree then that Mimo has an interest, has more than a 50 percent interest, actually has a

100 percent interest in Soukeina Enterprises?
A. Yes.
Q. It's your testimony that you were given the opportunity to review the application of insurance before you signed it, correct?
A. Yes.
Q. That was with Mr. Baydoun? What is his first name?
A. Ali. Apologize, when I signed it, I signed it at the front desk. There was a girl there. I didn't see Mr. Baydoun.
Q. If you had any questions you felt comfortable you could ask him any questions?
A. My mother usually takes care of that.
Q. And as far as the driver's, how many drivers there would be for the vehicles that were insured by Hartford my understanding is you were a driver, is that correct?
A. Uh-huh?
Q. Is that "yes"?
A. Yes.
Q. Your mother was a driver?
A. Yes.
Q. Your father was a driver?
A. Yes.
Q. And Ali was a driver?

EXHIBIT G

2013 WL 5338553
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Tyronne MEYERS, Plaintiff–Appellee,
v.
TRANSPORTATION SERVICES, INC., and Zurich American Insurance Company, Defendants/Cross–Defendants–Appellees/Cross–Appellees,
and
Titan Insurance Company, D efendant/Cross-Defendant-Appellant/Cross-Appellee,
and
Farmers Insurance Company, Defendant/Cross–Plaintiff–Appellee/Cross–Appellant.
Tyronne Meyers, Plaintiff–Appellee,
v.
Transportation Services, Inc., and Zurich American Insurance Company, Defendants/Cross–Defendants–Appellees,
and
Titan Insurance Company, Defendant–Appellant,
and
Farmers Insurance Company, Defendant/Cross–Plaintiff–Appellee.

Docket Nos. 300043, 303405. | Sept. 24, 2013.

Wayne Circuit Court; LC No. 09–000755–NF.

Before: BECKERING, P.J., and JANSEN and M.J. KELLY, JJ.

Opinion

PER CURIAM.

*1 These consolidated appeals arise from plaintiff's claim for personal protection insurance (PIP) benefits following a truck-pedestrian collision that occurred on January 11, 2008. In Docket No. 300043, defendant Titan Insurance Company (Titan) appeals by leave granted the circuit court's denial of its motion for summary disposition, and defendant Farmers Insurance Company (Farmers)[1] cross-appeals the circuit court's order denying its motion for summary disposition. In Docket No. 303405, Titan appeals by leave granted the circuit court's grant of partial summary disposition in favor of Farmers with respect to Farmers's cross-claim. In Docket No. 300043, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. In Docket No. 303405, we vacate and remand for further proceedings consistent with this opinion.

1 On December 16, 2009, the parties filed a stipulation agreeing that all references to "Farmers Insurance Company" should be amended to read "Farmers Insurance Exchange." Nevertheless, the parties continued to refer to the entity as "Farmers Insurance Company" in various pleadings and documents. Because we refer to the entity simply as "Farmers" throughout this opinion, the entity's precise name is not at issue.

I

On January 7, 2008, plaintiff applied to purchase a Titan no-fault insurance policy through independent agent Robert Abbo of the Insurance Max Agency in Detroit. The insurance application form signed by plaintiff contained the following question: "Does the applicant's household have any unlicensed drivers or any drivers with a suspended or revoked driver's license?" Plaintiff checked "No." Plaintiff's Titan insurance policy, Policy No. 01–PA–3199736, was issued that same day.

On January 11, 2008, at about 10:00 p.m., plaintiff was walking on southbound I–75 in Wayne County when he was hit by a semi truck owned by Transportation Services, Inc. (TSI). TSI is a self-insured trucking company and its excess insurance carrier is Zurich American Insurance Company (Zurich). According to the driver of the truck, plaintiff "jumped from the shoulder into his path." Plaintiff sustained severe head trauma, multiple broken bones, and numerous other serious, internal injuries.

At some point, Titan requested a copy of plaintiff's driving record from the Michigan Secretary of State. The Secretary of State's report, generated on January 17, 2008, indicated that plaintiff's driver license had been suspended "indefinite[ly]" as of September 12, 2007, for failure to pay a driver responsibility fee. The Secretary of State's report went on to state: "License Not Valid Until Reinstatement Fee Paid[.]" Titan employee Beverly Barrows opined in her affidavit

that plaintiff had made a "material" misrepresentation in his insurance application by indicating that his driver license was not suspended or revoked. Barrows initially averred that Titan had relied on the representations in plaintiff's application and would not have issued Policy No. 01–PA–3199736 if it had known that plaintiff's driver license was suspended.

On February 1, 2008, Titan sent a letter to plaintiff "rescinding any and all coverage" with respect to Policy No. 01–PA–3199736. The letter went on to provide:

> It has been discovered that material information was misrepresented on the application. Michigan Department of State Records reveals [sic] that your driver's license was suspended/ revolked [sic] on the date of the original application. State of Michigan Law ([MCL] 500.2103(1)(b)) indicates that any person with an [sic] suspended or revolked [sic] driver's license is ineligible for automobile insurance.

*2 Plaintiff requested PIP benefits from Titan, TSI, and Zurich. Titan denied plaintiff's claim for PIP benefits on the grounds that plaintiff had made a material misrepresentation in his insurance application and that Policy No. 01–PA–3199736 had been rescinded. TSI and Zurich denied plaintiff's claim for PIP benefits on the grounds that Titan was higher in priority and that plaintiff's injuries may have been intentionally caused. On January 9, 2009, plaintiff sued TSI, Zurich, and Titan in the Wayne Circuit Court, claiming that all three entities were in breach of contract as a result of their failure to pay PIP benefits.

On April 8, 2009, Titan moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it no longer had a contract with plaintiff and was consequently not obligated to pay plaintiff's claim. Titan contended that plaintiff had made a material misrepresentation in his insurance application and it had therefore rescinded plaintiff's policy.

Plaintiff responded on May 22, 2009, arguing that there were several questions of material fact that precluded summary disposition. On June 1, 2009, TSI and Zurich filed a joint response to Titan's motion. TSI and Zurich contended that plaintiff had not made a material misrepresentation in his insurance application and that Titan had not been entitled to rescind plaintiff's policy. They pointed out that it was independent agent Robert Abbo, and not plaintiff, who actually completed the application. TSI and Zurich also suggested that Titan would have issued Policy No. 01–PA–3199736 even if plaintiff had not provided any information concerning his driving record. According to TSI and Zurich, it is not Titan's usual practice to consider an applicant's driving record before issuing a no-fault insurance policy. As such, TSI and Zurich contended that Titan could not demonstrate that it had actually relied on the representations in plaintiff's application. Lastly, TSI and Zurich asserted that Titan had continued to accept plaintiff's premium payments even after it discovered that plaintiff's driver license was suspended. TSI and Zurich acknowledged that Titan had refunded these payments to plaintiff, but argued that Titan had nonetheless reinstated plaintiff's policy on February 5, 2008.

In reply, Titan acknowledged that it had mistakenly accepted a premium payment from plaintiff following the cancellation of Policy No. 01–PA–3199736, and that a new declaration page was inadvertently generated indicating that plaintiff's policy had been reinstated. However, in a second affidavit, Barrows averred that the new declaration page had been created in error, had been destroyed, and had never been mailed to plaintiff. Barrows further averred that plaintiff's policy "was never reinstated" and that the late-accepted payment from plaintiff had been fully refunded.

During the pendency of the proceedings, plaintiff filed an application with the Michigan Assigned Claims Facility, which assigned plaintiff's claim to Farmers on January 22, 2009. In a letter dated April 20, 2009, Farmers denied plaintiff's claim for PIP benefits on the ground that "the bodily injuries sustained appear to [have] be[en] caused by an intentional act."

*3 On September 28, 2009, plaintiff moved to amend his complaint to add Farmers as a defendant. The circuit court granted plaintiff's motion to amend and plaintiff filed a first amended complaint naming Farmers as an additional defendant.

On January 14, 2010, Farmers filed a cross-complaint, alleging that any PIP benefits payable to plaintiff were the responsibility of Titan, TSI, or Zurich. Farmers asserted that Titan, Zurich, and TSI (as a self-insurer) were all higher in priority than the Assigned Claims Facility. Among other things, Farmers sought reimbursement for any benefits that it

had already paid to plaintiff, together with costs and attorney fees.

On March 18, 2010, Titan filed a renewed motion for summary disposition under MCR 2.116(C)(10), again arguing that it had been entitled to rescind plaintiff's policy on the basis of a material misrepresentation in plaintiff's application. Titan also asserted that, pursuant to MCL 500.2103(1)(b), plaintiff was not "[e]ligible" for no-fault automobile insurance when he applied on January 7, 2008, because his license was suspended at that time. Titan pointed out that it had rescinded plaintiff's policy on February 1, 2009, less than 55 days after its issuance, in conformity with MCL 500.3220(b). Titan reiterated its position that, because plaintiff's policy was properly rescinded, it did not have an enforceable contract with plaintiff and was not responsible for paying the claimed PIP benefits.

Titan attached a letter from the Michigan Department of State, dated November 6, 2009, explaining that plaintiff had actually failed to pay two different driver responsibility fees. The letter explained that an earlier suspension of plaintiff's driver license had been resolved, but that plaintiff's license was again suspended on September 12, 2007, "for failure to pay a different driver responsibility fee...." The letter confirmed that, as of the date of plaintiff's insurance application on January 7, 2008, "[plaintiff's] driver license was suspended due to the 9/12/2007 indefinite suspension which has never been cleared."

TSI and Zurich then moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that Titan was higher in priority and that, assuming plaintiff was entitled to any PIP benefits at all, those benefits were the sole responsibility of Titan.[2] TSI and Zurich again claimed that plaintiff had not made a material misrepresentation in his insurance application on January 7, 2008. TSI and Zurich again asserted that Titan does not rely on an applicant's representations concerning his or her driving record when deciding whether to issue a no-fault insurance policy. TSI and Zurich also contended that Titan should be equitably estopped from rescinding plaintiff's policy in light of the fact that Titan continued to accept plaintiff's premium payments and "never bothered to run [plaintiff's driving record] until after it received notice of [plaintiff's] involvement in the [collision]."

2 Farmers concurred in the motion filed by TSI and Zurich. According to TSI and Zurich, the question whether "[plaintiff's] actions ... were intentional, thus excluding his eligibility for no-fault benefits pursuant to MCL 500.3105(1) and (4)," was an "issue[ ] to be raised at a later date."

*4 TSI and Zurich attached the transcribed deposition of Sonia Simmons, a Titan claims representative. Simmons testified that the Secretary of State's report showing that plaintiff's driver license was suspended on January 7, 2008, was the "sole basis" for which Titan had cancelled plaintiff's policy. Simmons further testified that Titan relies on driving record reports generated by the Michigan Department of State and does not generally attempt to independently confirm the accuracy of such reports. Citing MCL 500.3220, Simmons confirmed that Titan would not have checked plaintiff's driving record at all if the collision had occurred more than 55 days after the policy was issued. TSI and Zurich also attached the transcribed deposition of Beverly Barrows. Barrows testified that she never attempted to independently verify whether plaintiff had a valid driver license and that, if plaintiff had not been involved in the collision, Titan would never have checked his driving record. When asked, "Are there situations where Titan will issue an insurance policy to someone who has a suspended license, maybe as an excluded driver or something along those lines," Barrows responded, "Yes."

Farmers moved for summary disposition on April 16, 2010, arguing that it was beyond genuine factual dispute that Titan was plaintiff's no-fault insurer at the time of the collision on January 11, 2008, that Titan was therefore highest in the order of priority, and that Titan was exclusively responsible for the PIP benefits, if any, that were payable to plaintiff.

On April 30, 2010, plaintiff moved for summary disposition arguing that he had properly claimed PIP benefits through the Assigned Claims Facility given the coverage dispute among carriers. Plaintiff contended that there was no genuine issue of material fact and that Farmers was required to pay his claimed PIP benefits as a matter of law. According to plaintiff, Farmers had initially paid approximately $4,000 or $5,000 in benefits, but had then stopped paying altogether. Plaintiff asserted that Farmers had "no reasonable basis to cease paying PIP benefits" and argued that he was entitled to interest on the unpaid, overdue benefits. Plaintiff also contended that he was entitled to costs and attorney fees from Farmers as a result of its unreasonable denial of benefits.

At oral argument on May 7, 2010, plaintiff's counsel asserted that "[a]t the time that [plaintiff] signed up for insurance with Titan, he thought he had a valid license." Counsel

argued that plaintiff had only discovered later, sometime after submitting his application, that his driver license was suspended. Counsel pointed to a letter that plaintiff had received from the Michigan Department of State in July 2007. That letter confirmed that an earlier license suspension had been cleared, and stated that plaintiff should carry the letter with him while driving as evidence that his license was restored. According to plaintiff's counsel, plaintiff relied on this letter and believed that he had a valid driver license as of January 7, 2008.

*5 However, counsel for Titan pointed out that plaintiff had subsequently failed to pay a second driver responsibility fee, and that his license was again suspended on September 12, 2007. Thus, regardless whether plaintiff knew or not, it was beyond factual dispute that his driver license was in suspended status at the time he applied for no-fault insurance on January 7, 2008.

Following the attorneys' arguments, the circuit court made the following remarks from the bench:

> Now with regard to the motion of Titan, [plaintiff] didn't make an intentional misrepresentation.
>
> At any rate notwithstanding the representation that was made regarding licensure ..., it wasn't material. The deposition testimony supports the fact that the policy would have been issued ... no matter.
>
> Further, the presence or absence of the licensure didn't make a difference here because the plaintiff wasn't injured while driving. He was injured as a pedestrian. As a result Zurich is out, Titan is his priority insurer. That leaves us with the initial question I asked to Farmers. [F]inding that Titan is the priority carrier, does Farmers walk out the door? I don't think so. I think Farmers stays in on the question of whether or not the plaintiff can recover penalty interest and possibly attorney fees once we have the trial and the circumstances are gone into as to the basis for the failure to pay. The reasonableness of the conduct would be reserved for the trial itself.
>
> The question of eligibility, that will be resolved by the jury and if in fact he was not eligible for the reasons initially asserted by Farmers then no one will be responsible including Titan. [B]ut that is something for the jury to determine ... and there will be a box on the verdict form for the jury to make a finding as to that point[.]
>
> Assuming that he was eligible and this was not an intentional attempted suicide, whatever, then they can make the call as to whether or not under the circumstances Farmers should have paid....

On June 21, 2010, the circuit court entered an order denying Titan's motion for summary disposition, granting summary disposition in favor of TSI and Zurich, and dismissing with prejudice all claims and cross-claims against TSI and Zurich. On July 26, 2010, the circuit court entered a second order denying Farmers's motion for summary disposition, determining that Farmers was responsible for paying any no-fault benefits incurred through May 7, 2010, ruling that "any misrepresentation on the insurance application for Titan automobile insurance that might have occurred was not material," and concluding that Titan was the insurance carrier of highest priority for no-fault benefits incurred after May 7, 2010. Titan moved for reconsideration of both orders, but the motions were denied.

On September 7, 2010, Titan filed an application for leave to appeal the circuit court's order of July 26, 2010. This Court initially denied Titan's application for leave to appeal,[3] but subsequently granted Titan's application on reconsideration.[4] Farmers filed its claim of cross-appeal on July 22, 2011.

3 *Meyers v. Transportation Services, Inc,* unpublished order of the Court of Appeals, entered February 24, 2011 (Docket No. 300043).

4 *Meyers v. Transportation Services, Inc,* unpublished order of the Court of Appeals, entered July 1, 2011 (Docket No. 300043).

*6 On December 22, 2010, Farmers moved for summary disposition with respect to its cross-claim against Titan pursuant to MCR 2.116(C)(10). Farmers requested that the circuit court enter an order declaring that it was entitled to reimbursement from Titan for any and all claims ultimately deemed payable by Farmers. Farmers argued that, as a carrier assigned by the Assigned Claims Facility, it was entitled to reimbursement from Titan for all PIP benefits and other costs paid to plaintiff, including interest and attorney fees.

On February 18, 2011, the circuit court entered an order granting in part and denying in part Farmers's motion for summary disposition with respect to its cross-claim against Titan. The court ruled that Farmers "is entitled to

reimbursement of reasonable expenses related to Plaintiff's PIP claim, if and when it pays such expenses for said claim, from Titan Insurance Company." The court also ruled, however, that Farmers "is not entitled to reimbursement of any expenses deemed unreasonable, including but not limited to interest penalties pursuant to MCL 500.3142, or attorney fees pursuant to MCL 500.3148, or both." The court determined that there remained an issue of fact concerning whether plaintiff was entitled to interest and attorney fees.

On March 15, 2011, the circuit court entered an order granting a stay of proceedings pending appeal. On April 5, 2011, Titan filed an application for leave to appeal the circuit court's order of February 18, 2011. This Court granted Titan's application for leave on December 1, 2011, and consolidated the matter with Titan's appeal that was already pending in Docket No. 300043. [5]

5 *Meyers v. Transportation Services, Inc,* unpublished order of the Court of Appeals, entered December 1, 2011 (Docket No. 303405).

II

We review de novo the circuit court's decision to grant or deny a motion for summary disposition. *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337; 572 NW2d 201 (1998). "Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and that the moving party is entitled to judgment as a matter of law." *Kennedy v. Great Atlantic & Pacific Tea Co,* 274 Mich.App 710, 712; 737 NW2d 179 (2007). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v. Gen Motors Corp,* 469 Mich. 177, 183; 665 NW2d 468 (2003).

III

This case is replete with triable issues of fact that must first be addressed in the circuit court. We fully acknowledge that "an insurer may rescind an insurance policy and declare it void *ab initio* where such policy was procured through the insured's intentional misrepresentation of a material fact in the application for insurance." *Auto–Owners Ins Co v. Comm'r of Ins,* 141 Mich.App 776, 780; 369 NW2d 896 (1985). However, the central issues in these consolidated appeals are controlled by our Supreme Court's recent decision in *Titan Ins Co v. Hyten,* 491 Mich. 547; 817 NW2d 562 (2012). As the decision in *Hyten* makes clear, the fact that Titan did not timely investigate the representations in plaintiff's insurance application, and the fact that Titan did not attempt to independently verify whether plaintiff was a licensed driver, have no bearing on Titan's ultimate entitlement to rescind plaintiff's insurance policy on the basis of fraudulent misrepresentation. Instead, the real question is whether plaintiff did, indeed, make a material misrepresentation when he indicated on his insurance application that he had a valid driver license (or, alternatively, if independent agent Abbo completed the application, whether plaintiff made a material misrepresentation when he signed it). Specifically, in order to support its rescission of plaintiff's no-fault policy, Titan will have to prove that (1) plaintiff made a material misrepresentation, (2) the representation was false, (3) plaintiff knew the representation was false when he made it or made it recklessly without knowledge of its truth, (4) plaintiff made the representation with the intent that it would be acted on by Titan, (5) Titan acted in reliance on the representation, and (6) Titan thereby suffered injury. *Hyten,* 491 Mich. at 571–572.

*7 As noted, genuine issues of material fact remain with respect to these questions. However, if Titan can ultimately prove these elements, it will be able to establish that plaintiff's insurance policy was properly rescinded. In such a case, Titan will not be responsible for paying any PIP benefits to plaintiff. See *id.* at 572. It does not matter that Titan could have ascertained the alleged fraud by conducting its own investigation. *Id.*

Of course, plaintiff claims that at the time he completed his insurance application on January 7, 2008, he could not have made any intentional misrepresentations because he did not know that his driver license was suspended. He also claims that even if he made a false representation on his insurance application, it was not material and Titan did not actually rely on the representation to issue the policy of insurance. However, there is substantial countervailing evidence pertaining to these issues. In other words, these matters also present genuine issues of material fact that require development in the circuit court. Whether a misrepresentation was material and whether it was relied on are generally questions of fact for the jury. See *Bergen v. Baker,* 264 Mich.App 376, 388–389; 691 NW2d 770 (2004).

Lastly, there certainly remains a genuine issue of material fact concerning whether plaintiff's injuries were self-inflicted. We note that, if the jury ultimately concludes that plaintiff's injuries were caused intentionally, plaintiff will not be entitled to PIP benefits from *any* insurer, and each of the defendants will be entitled to judgment as a matter of law.

In Docket No. 300043, we affirm the circuit court's order denying Titan's motion for summary disposition, affirm the circuit court's order denying Farmers's motion for summary disposition, and reverse the circuit court's order dismissing TSI and Zurich. We also reverse the circuit court's conclusions that Farmers was responsible for paying any no-fault benefits incurred through May 7, 2010, that Titan was the insurance carrier of highest priority with respect to no-fault benefits incurred after May 7, 2010, and that any misrepresentation on plaintiff's insurance application "was not material."

IV

In Docket No. 303405, we vacate the circuit court's ruling on Farmers's motion for summary disposition with regard to its cross-claim against Titan. Quite simply, it would be premature to address whether Farmers is entitled to reimbursement from Titan. This issue cannot be resolved until after it is determined whether Titan was entitled to rescind plaintiff's policy of insurance in the first place. If the elements of actionable fraud are ultimately proven, and Titan is consequently entitled to judgment in this regard, Titan will not be responsible for reimbursing Farmers. Any remaining question concerning plaintiff's entitlement to costs, interest, and attorney fees will depend on the resolution of the main issues in this case.

***8** In Docket No. 300043, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. In Docket No. 303405, we vacate and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, no party having prevailed in full.

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